



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 7, 2006

Ms. Mary Jean Meier
Administrative Support I
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2006-07221

Dear Ms. Meier:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 253569.

The Baytown Police Department (the "department") received a request for a police report regarding a domestic disturbance at a specified address in March 2006. You state that you will redact the social security numbers from the responsive information pursuant to section 552.147 of the Government Code. See Gov't Code § 552.147 (authorizing a governmental body to redact a living person's social security number from public release without the necessity of requesting decision from this office under the Act). You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses common law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

With certain types of intimate and embarrassing records, this office has previously concluded that, generally, only information that identifies or tends to identify a victim must be withheld

under section 552.101 in conjunction with common law privacy. *See, e.g.*, Open Records Decision Nos. 393 (1983), 339 (1982); *see also Morales v. Eller*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment is highly intimate or embarrassing information and public does not have legitimate public interest in such information). With other types of intimate and embarrassing records, this office requires a governmental body to withhold information describing the conduct at issue. In this instance, the request and the submitted records indicate that the requestor knows both the identity of an individual whose privacy is implicated and the nature of the incident at issue. Generally, under these circumstances, the department must withhold the submitted information in its entirety in order to protect the privacy interests at issue.

We note, however, that the requestor is the spouse of the individual whose privacy interests are implicated. As such, the requestor may have a right of access to this information as the authorized representative of his spouse. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). Therefore, we rule conditionally. If the requestor does not have a right of access under section 552.023 to the private information at issue, the department must withhold the submitted information in its entirety in order to protect the common law privacy interests of the individual to whom this information pertains. If the requestor does have a right of access under section 552.023 to the private information at issue, the department must release the submitted information in accordance with the remainder of this ruling.

The submitted information includes a Texas driver's license number that does not belong to the requestor or his spouse. Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130. The department must withhold under section 552.130 the Texas driver's license number to which the requestor does not have a special right of access under section 552.023.

In summary, if the requestor does not have a right of access under section 552.023 to the private information at issue in the submitted records, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common law privacy. If the requestor does have a right of access under section 552.023 to the private information at issue, the department must release the submitted information; however, the Texas driver's license number to which the requestor does not have a right of access must be withheld under section 552.130 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dh

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Enc. Submitted documents

c: Mr. Rogelio Rendon
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(w/o enclosures)