ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 4, 2006

Ms. M. Ann Montgomery
Assistant Ellis County & District Attorney
Temporary Administration Building
1201 North Highway 77, Suite 104
Waxahachie, Texas 75165-7832

OR2006-08715

Dear Ms. Montgomery:

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# 257734.

The Ennis Police Department (the "department") received a request for a police report pertaining to a specific accident. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that included among the documents you seek to withhold is a CRB-3 accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code.[1] *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.*

[1]The Texas Department of Public Safety informs us that the Texas Peace Officer's Accident Report, ST-3 form, has been replaced by the Texas Peace Officer's Crash Report, CRB-3 form.

Here, the requestor has provided the department with all three of the pieces of information. Thus, you must release the accident report in its entirety under section 550.065(b).

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential under common-law and constitutional privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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. 540 S.W.2d at 683.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

Although you argue that the information at issue is confidential under common-law or constitutional privacy, upon review, we find no information made confidential under a right of privacy, and none of the submitted information may be withheld under section 552.101 of the Government Code on that basis.

You also raise section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007(c) reads as follows:

> Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:
>
> > (1) if maintained on paper or microfilm, kept separate from adult files and records;
> >
> > (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
> >
> > (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Section 58.007 only applies to law enforcement records of a juvenile who has engaged in delinquent conduct or conduct indicating a need for supervision. *See id.* § 51.03(a), (b) (defining delinquent conduct and conduct indicating a need for supervision). However, section 58.007 does not make information relating to traffic offenses confidential. *See id.* §§ 51.02(16) (definition of traffic offense), 51.03(a) (delinquent conduct does not include traffic offense), 51.03(b) (conduct indicating need for supervision does not include traffic offense), 58.007(b) (section applies to records and files relating to child who is party to proceeding under Title 3 of Family Code). Because the submitted information does not involve delinquent conduct or conduct indicating a need for supervision for purposes of the Family Code, we conclude that section 58.007 is not applicable to this information, and it may not be withheld on that basis.

Section 261.201(a) of the Family Code provides as follows:

> (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:
>
> > (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

> (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Upon review, we find that the submitted information does not consist of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261. Accordingly, we conclude that none of the submitted information is within the scope of section 261.201 of the Family Code, and none of it may be withheld under section 552.101 on that basis.

We note, however, that portions of the submitted information are excepted from release under section 552.130 of the Government Code. This section excepts from disclosure information that relates to: (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; (2) a motor vehicle title or registration issued by an agency of this state; or (3) a personal identification documentation issued by an agency of this state or a local agency authorized to issue an identification document. Gov't Code § 552.130(a). We have marked the Texas motor vehicle information that the department must withhold under section 552.130.

In summary, the department must withhold the Texas motor vehicle information we have marked. The department must release the remaining submitted information.

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,

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/krl

Ref: ID# 257734

Enc. Submitted documents

c: Charly Korby
Clinesmith and Lynch
121 West Hickory
Denton, Texas 76201
(w/o enclosures)