ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 18, 2006

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

OR2006-09493

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# 256957.

The Baytown Police Department (the "department") received a request for a specified incident report. You claim that the requested information is excepted from disclosure under sections 552.101, 552.130, 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common law 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (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. After reviewing the submitted information, we agree that it contains information that is generally protected by a right of privacy. We note, however, that this private information pertains to the requestor. Pursuant to section 552.023 of the Government Code, the requestor has a special right of access to information that is excepted from public disclosure under laws intended to protect the requestor's own privacy interest as the subject of the information. Thus, the department may not withhold any of the submitted information

under section 552.101 in conjunction with common-law privacy.[1] *See* Gov't Code § 552.023; *see* also Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual asks governmental body to provide him with information concerning himself).

The submitted police report also contains information subject to section 552.130 of the Government Code, which 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 [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. In accordance with section 552.130 of the Government Code, the department must withhold the Texas motor vehicle record information that you have marked.

Finally, the remaining submitted information contains social security numbers. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under Act. Gov't Code § 552.147. Therefore, the department must withhold the social security numbers contained in the remaining submitted information under section 552.147.[2]

In summary, the department must withhold the Texas motor vehicle record information you have marked under section 552.130 of the Government Code. The department must also withhold the social security numbers you have marked under section 552.147 of the Government Code. The remaining submitted information must be released to the requestor.

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

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[1]We note, however, that because this requestor has a special right of access to some of the information at issue under section 552.023, in the event the department receives another request for this information from someone other than this requestor or her authorized representative, the department must ask this office for a decision whether the information is subject to public disclosure.

[2]We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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,

L. Joseph James

L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/dh

Ref: ID# 256957

Enc. Submitted documents

c: Ms. Mary Ellen Hutchins
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Highlands, Texas 77562
(w/o enclosures)