



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2006

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P. O. Box 469002
Garland, Texas 75046-9002

OR2006-12617

Dear Mr. Mann:

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# 262966.

The Garland Police Department (the "department") received a request for information relating to an incident involving a named individual. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

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. You raise section 552.101 in conjunction with the common-law right to privacy. Information must be withheld from the public in conjunction with common-law privacy when the information is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. See *id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. See generally Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private).

The submitted documents contain information that is highly intimate or embarrassing and is not a matter of legitimate public interest. We agree that the information you have highlighted in blue in the submitted documents must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. We have marked additional information that must be withheld from the public under common-law privacy.

We also note that you have highlighted information that you seek to withhold under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We agree that you must withhold the Texas driver's license number you have marked under section 552.130.

Finally, we note that the requestor claims to be the spouse of the individual who is the subject of the submitted information. If the requestor is this individual's authorized representative, then, pursuant to section 552.023 of the Government Code, she has a right of access to the information marked under sections 552.101 and 552.130. *See* Gov't Code § 552.023(a).¹ If the requestor has a right of access under section 552.023, then the information at issue may not be withheld from her under section 552.101 on privacy grounds, nor under section 552.130, and this information must be released, along with the remaining submitted information. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). If the requestor does not have a right of access under section 552.023, then the information marked under sections 552.101 and 552.130 must be withheld from the requestor on the basis of those exceptions.²

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

¹Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

²We note that the submitted information also contains a social security number, which you appear to have redacted in accordance with section 552.147 of the Government Code. *See* Gov't Code §§ 552.147(b) (authorizing 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.) However, this exception protects personal privacy. Therefore, if the requestor is the authorized representative of the individual to whom the submitted information pertains, then she also has a right of access to his social security number under section 552.023(a).

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# 262966

Enc: Submitted documents

c: Ms. Crystal Canady
4810 Gatewood
Garland, Texas 75043
(w/o enclosures)