



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 28, 2008

Mr. Floyd Akers
City Attorney
Pflugerville Police
P. O. Box 679
Pflugerville, Texas 78691

OR2008-05681

Dear Mr. Akers:

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# 308468.

The Pflugerville Police Department (the "department") received a request for two specified incident reports as well as all information, including police reports, pertaining to 9-1-1 calls made from two specified telephone numbers during a specified time period. You claim that the submitted incident reports and compact discs ("CDs") are excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception 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. 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

¹ Although you cite to section 552.108 of the Government Code, you have provided no arguments in support of withholding the submitted information under this section. Therefore, we do not address the applicability of section 552.108 to the submitted information. See Gov't Code §§ 552.301(e)(1)(A), .302.

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. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

Upon review, we conclude that report numbers 08020137 and 08010347 pertain to this type of incident and the reports indicate that the requestor knows the identity of the individual at issue as well as the nature of the incident. Accordingly, to protect the privacy of the individual to whom the information relates, the department must generally withhold the report number 08020137 and the corresponding CD as well as report number 08010347 in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy. In addition, we have marked information in report number 08020100 and have indicated which information in the remaining CDs that must be withheld under section 552.101 and common-law privacy. In the event that the department does not have the technological capability to redact such information from the CDs, we conclude that the department must withhold these CDs in their entirety.

We note, however, that the requestor identifies herself as the spouse of the individual to whom the submitted information pertains. As such, the requestor may have a special right of access to the submitted information as the authorized representative of the individual to whom it pertains. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).² If the requestor has a right of access to the submitted information as the individual's authorized representative under section 552.023, then the department may not withhold any of the submitted information from the requestor on privacy grounds under section 552.101 and must release this information to the requestor. If the requestor does not have a right of access under section 552.023, then the department must withhold report number 08020137 and the corresponding CD as well as report number 08010347 in their entirety as well as the remaining information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

²Section 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."

We also note that report number 08020100 contains information subject to section 552.130 of the Government Code.³ Section 552.130 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. However, section 552.130 protects privacy interests. The information at issue belongs to the requestor’s husband. Thus, to the extent the requestor is the authorized representative of her husband, she has a right of access under section 552.023 to the information at issue, and it may not be withheld under section 552.130. *Id.* § 552.023(a). To the extent the requestor is not the authorized representative of her husband, the department must withhold the information we have marked under section 552.130.

In summary, if the requestor is acting as the authorized representative of her husband, then the department must release the requested information in its entirety to the requestor. If the requestor is not acting as the authorized representative of her husband, then the department must withhold report number 08020137 and the corresponding CD as well as report number 08010347 in their entirety as well as the remaining information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. In the event that the department does not have the technological capability to redact such information from the CDs, we conclude that the department must withhold the CDs in their entirety. Otherwise, the department must release the remaining portions of the audio recording to the requestor. The department must withhold the information that we have marked under section 552.130. The remaining information must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 challenge 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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/ma

Ref: ID# 308468

Enc. Submitted documents

c: Ms. Constance Culling-Strothers
413 Swenson Farms #1321
Pflugerville, Texas 78660
(w/o enclosures)