



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 25, 2009

Mr. Paul F. Wieneskie
Attorney at Law
204 South Mesquite
Arlington, Texas 76010

OR2009-02489

Dear Mr. Wieneskie:

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# 337586.

The Euless Police Department (the "department"), which you represent, received a request for two specific incident reports. You have submitted one of the requested reports for our review.¹ 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.

Section 552.101 of the Government Code excepts from disclosure under the Act "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that: (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See 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. 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. In this instance, the report reveals that the requestor knows the identity of the

¹We assume that, if the department maintains the second requested report, the department has already released such information to the requestor. *See* Gov't Code § 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply, then it must release information as soon as possible).

individual involved as well as the nature of the information in the submitted report. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right of privacy. Thus, the entire submitted report is generally confidential under section 552.101 in conjunction with common-law privacy. However, we note that the information at issue indicates that the requestor is the spouse of the person whose right to privacy is implicated by this request. Thus, the requestor may have a right of access to the submitted information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). If the requestor is not acting as her spouse's authorized representative, then she does not have a right of access to the submitted information, and the department must withhold the information under section 552.101 of the Government Code in conjunction with common-law privacy. Conversely, if the requestor is acting as her spouse's authorized representative, then she has a right of access to the submitted information pursuant to section 552.023, and the department must release this information to her.

Finally, we note that the submitted information contains Texas driver's license numbers belonging to a person other than the requestor or her spouse. Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from [disclosure] if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

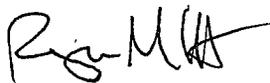
Gov't Code § 552.130(a)(1), (2). Accordingly, if the requestor demonstrates a right of access to the submitted information, the department must redact the Texas driver's license numbers we have marked pursuant to section 552.130 before releasing the information to her.

In summary, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy, unless the requestor demonstrates that she has a right of access to this information under section 552.023 of the Government Code. If the requestor demonstrates such a right of access, the department must release the submitted information to her, but must first redact the information we have marked pursuant to section 552.130 of the Government Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/eb

Ref: ID# 337586

Enc. Submitted documents

cc: Requestor
(w/o enclosures)