



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2009

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2009-06046

Dear Ms. Sandoval-Walker:

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# 342296.

The El Paso Police Department (the "department") received a request for all information regarding a specified officer-involved shooting incident. We understand the department has provided some of the requested information to the requestor. You claim the submitted incident report, video recording, and photographs are excepted from disclosure under sections 552.103, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022(a)(1) of the Government Code, which provides:

the following categories of information are public information and not excepted from required disclosure under [the Act] unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted incident report, video recording, and photographs are part of a completed investigation. This information must be released under section 552.022(a)(1), unless the information is excepted from disclosure under section 552.108 or expressly confidential under other law. Section 552.103 of the Government Code is a discretionary exception to public disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not "other law" that makes information confidential for the purposes of section 552.022. Therefore, the department may not withhold any of the submitted information under section 552.103. However, because information subject to section 552.022(a)(1) may be withheld under sections 552.130 and 552.147 of the Government Code, we will consider your arguments under these exceptions.

You claim the submitted incident report, video recording, and photographs include information protected by section 552.130 of the Government Code, which provides 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 note section 552.130 does not apply to out-of-state motor vehicle record information. Thus, the department must withhold the Texas motor vehicle record information we have marked in the incident report, the Texas license plate numbers contained in the video recording, and the Texas license plate numbers and vehicle identification number ("VIN") contained in the photographs under section 552.130 of the Government Code.

You claim the social security numbers in the remaining information are excepted from disclosure under section 552.147 of the Government Code. This section provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act.¹ *Id.* § 552.147. We note the remaining information contains a deceased individual's social security number. Because section 552.147 pertains only to social security numbers of living individuals, the decedent's social security number may not be withheld under section 552.147. We also note the remaining information contains the requestor's client's social security number, which may not be withheld in this instance. *See id.* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests). Therefore, with the exception of the requestor's client's social security number, the

¹We note 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.

department may withhold the social security numbers of living individuals listed in the remaining information under section 552.147 of the Government Code.

We note some of the remaining information is protected by common-law privacy. 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." *Id.* § 552.101. This exception 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex.1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are 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). We have marked the medical information that is highly intimate or embarrassing and not of legitimate public concern. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

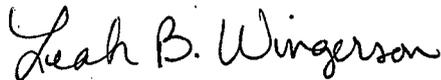
In summary, the department must withhold the Texas motor vehicle record information we have marked in the incident report, the Texas license plate numbers contained in the video recording, and the Texas license plate numbers and VIN contained in the photographs under section 552.130 of the Government Code, as well as the information we have marked in the incident report under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the requestor's client's social security number, the department may withhold the social security numbers of living individuals under section 552.147 of the Government Code. The remaining information must be released.²

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.

²We note the remaining information contains the requestor's client's private information, which is generally confidential with respect to the general public. Because this information belongs to the requestor's client, it may not be withheld in this instance. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself). If the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 342296

Enc. Submitted documents

c: Requestor
(w/o enclosures)