



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 2, 2009

Mr. Gregory A. Alicie
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2009-07476

Dear Mr. Alicie:

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# 344965.

The Baytown Police Department (the "department") received a request for a specified police report. You state you will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.136 of the Government Code. We have considered the exceptions 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 common-law right of privacy, which protects information if it (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). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault,

¹Section 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. See Gov't Code § 552.147(b).

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 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 agree a portion of the submitted information, which we have marked, is intimate or embarrassing and of no legitimate public interest. Accordingly, the department must withhold the marked information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining information is either not highly intimate or embarrassing or it is of legitimate public interest. Therefore, none of the remaining information may be withheld pursuant to this exception.

Next, you seek to withhold some of the remaining information under section 552.136 of the Government Code, which states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). The department must withhold the bank account numbers we have marked under section 552.136 of the Government Code. We note, however, the remaining information you marked under section 552.136 consists of check numbers. Check numbers do not constitute access device numbers for purposes of section 552.136. Accordingly, none of the remaining information may be withheld under section 552.136 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.136 of the Government Code. The remaining information must be released to this requestor.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.

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

²We note that the information being released contains confidential information to which the requestor has a right of access. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). Therefore, if the department receives another request for this same information from a different requestor, then the department should again seek a decision from this office.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matt Entsminger', written in a cursive style.

Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/dls

Ref: ID# 344965

Enc. Submitted documents

c: Requestor
(w/o enclosures)