



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 16, 2009

Mr. Ryan S. Henry
Denton, Navarro, Rocha & Bernal P.C.
2517 North Main Avenue
San Antonio, Texas 78212

OR2009-16235

Dear Mr. Henry:

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# 361376.

The City of Burnet (the "city") received a request for any records concerning an incident involving a named individual's report that an unknown person broke into her home and assaulted her. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 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. 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found some kinds of medical information or information indicating disabilities or specific illnesses to be excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Determinations under common-law privacy must be made on a case-by-case basis. *See* Open Records Decision No. 373 at 4 (1983); 540 S.W.2d at 685 (whether matter is of legitimate interest to public can be considered only in context of each particular case). We find the references to specific drugs prescribed to the

named individual is intimate and embarrassing information. We also find no legitimate public interest in disclosure of this information in this instance. Upon review, we marked the information from the submitted documents that identifies the drugs prescribed to the named individual. The city must withhold this marked information, as well as the portions of the submitted audio and video recordings naming the drugs, under section 552.101 in conjunction with common-law privacy. You also argue some of the submitted photographs and information in the report related to the nature and location of the named individual's injuries consist of intimate and embarrassing information of no legitimate public interest. However, this information pertains directly to the criminal allegations made by the named individual, and to the city's police department's investigation of those allegations. Consequently, we find this information to be of legitimate public interest in this instance. *See Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a "legitimate public interest in facts tending to support an allegation of criminal activity" (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994))). We therefore conclude the city may not withhold any of the remaining submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

You state the submitted records also contain Texas motor vehicle record information subject to section 552.130 of the Government Code. 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." *Id.* § 552.130. Accordingly, the city must withhold the Texas driver's license number you marked, as well as the instances of that number we have marked, pursuant to section 552.130 of the Government Code.

You also marked a social security number in the remaining information you assert is 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. *Id.* § 552.147. Therefore, the city may withhold the marked social security number under section 552.147 of the Government Code.

In summary, the city must withhold the medical information we marked from the submitted documents, as well as the portions of the audio and video records that mention drugs prescribed to the named individual, under section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold the marked Texas driver's license number under section 552.130 of the Government Code. The city may withhold the marked social security number under section 552.147. As you raise no other exceptions to disclosure, the remaining information must be released.

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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bob Davis', with a long horizontal flourish extending to the right.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 361376

Enc. Submitted documents

cc: Requestor
(w/o enclosures)