



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 4, 2010

Ms. Elsie A. Plaunty  
Administrative Assistant  
Azle Police Department  
613 South East Parkway  
Azle, Texas 76020

Ms. Cara Leahy White  
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Attorney for City of Azle  
6000 Western Place Suite 200  
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Fort Worth, Texas 76107-4654

OR2010-06354

Dear Ms. Plaunty and Ms. White:

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# 377909.

The Azle Police Department (the "department"), which Ms. White represents, received a request for information relating to a specified case number. The department indicates that some of the requested information has been released. The department claims that some of 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 information you submitted.

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 exception encompasses constitutional and common-law rights to privacy. Constitutional privacy protects two kinds of interests. See *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4

(1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the "zones of privacy" pertaining to marriage, procreation, contraception, family relationships, and child rearing and education that have been recognized by the United States Supreme Court. *See Fado v. Coon*, 633 F.2d 1172 (5<sup>th</sup> Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5<sup>th</sup> Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. *See* ORD 455 at 7. Constitutional privacy is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492).

The common-law right to privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private).

The department contends that the responsive information Ms. White has submitted is protected by constitutional and common-law privacy. As the information submitted by Ms. Plaunty pertains to the same incident, we will determine whether the department must withhold any of the submitted information on privacy grounds. We note that the information at issue pertains to a criminal investigation of an alleged sexual assault. The identity of the victim of an alleged sexual assault is generally confidential under section 552.101 of the Government Code in conjunction with common-law privacy. *See Indus. Found.*, 540 S.W.2d at 683; Open Records Decision Nos. 393 (1983), 339 (1982). In this instance, however, the requestor was the victim of the alleged sexual assault. The requestor has a special right of access under section 552.023 of the Government Code to information that the department would be required to withhold from the public to protect his privacy. *See* Gov't Code § 552.023.<sup>1</sup> Therefore, none of the submitted information that identifies the victim of the alleged sexual assault may be withheld from this requestor on the basis of constitutional or common-law privacy under section 552.101 of the Government Code. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

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<sup>1</sup>Section 552.023 provides in part 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." Gov't Code § 552.023(a).

With respect to the rest of the information at issue, the department contends that the suspect in the investigation of the alleged sexual assault has a right to privacy that outweighs the public's interest, because the information pertains to "the most intimate aspects of [his] personal affairs." The department also asserts that the information at issue is highly intimate or embarrassing and not a matter of legitimate public interest. We note that the information at issue reveals details of an alleged crime. The public has a legitimate interest in knowing the general details of a crime. *See generally* *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)); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-187 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (public has legitimate interest in details of crime and police efforts to combat crime in community). Having considered all of the department's arguments, we find that the public has a legitimate interest in the rest of the information at issue. We also find that the public's interest in this information outweighs the suspect's privacy interests. We therefore conclude that the department may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with constitutional or common-law privacy.

Section 552.101 also encompasses information that other statutes make confidential. Section 560.003 of the Government Code provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." Gov't Code § 560.003; *see id.* §§ 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry), .002 (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless individual consents to disclosure). The department must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Lastly, we note that section 552.130 of the Government Code is applicable to some of the submitted information.<sup>2</sup> Section 552.130 excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See id.* § 552.130(a)(1). The department must withhold the Texas driver's license numbers we have marked under this exception.<sup>3</sup>

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<sup>2</sup>This office will raise section 552.130 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

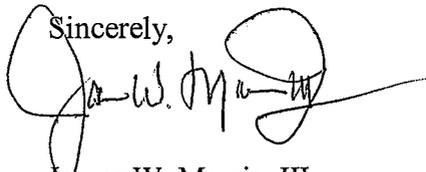
<sup>3</sup>We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an attorney general decision, including a fingerprint under section 552.101 in conjunction with section 560.003 of the Government Code and a Texas driver's license number under section 552.130.

In summary: (1) the marked fingerprints must be withheld under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; and (2) the marked Texas driver's license numbers must be withheld under section 552.130 of the Government Code. The rest of the submitted information must be released.<sup>4</sup>

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](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,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/rl

Ref: ID# 377909

Enc: Submitted information

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note that the remaining information includes the requestor's social security number. 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. The requestor has a right, however, to his own social security number. *See generally* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).