



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 21, 2011

Mr. Mack Reinwand  
Assistant Police Legal Advisor  
Arlington Police Department  
P.O. Box 1065  
Arlington, Texas 76004-1065

OR2011-01017

Dear Mr. Reinwand:

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# 407924 (ref. no. 2451-111110).

The Arlington Police Department (the "department") received a request for six specified incident reports. You state the department has released some of the requested information, but claim 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 "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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). The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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. 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). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated 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. Upon review, we find you have not demonstrated, nor does it otherwise appear, that the submitted information pertains to situations where the entirety of the information must be withheld on the basis of common-law privacy. However, we conclude some of the submitted information is intimate or embarrassing and is not of legitimate concern to the public; therefore, the department must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy. The remaining information at issue is either not highly intimate or embarrassing, or it pertains to the requestor. *See* Gov't Code § 552.023(a) ("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"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses information protected by other statutes. Section 1703.306(a) of the Occupations Code provides that "[a] polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person[.]" Occ. Code § 1703.306(a). We note the submitted information contains polygraph information that is confidential under section 1703.306, and the requestor does not appear to have a right of access to the information under that section. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

Some of the remaining information is excepted under section 552.130 of the Government Code, which provides that 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.<sup>1</sup> Gov't Code § 552.130(a)(1), (2). The requestor has a right of access to her own Texas motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.*: § 552.023(a); ORD 481 at 4. However, the department must withhold the

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); *see, e.g.*, Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

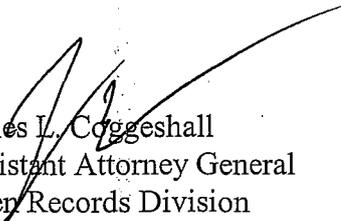
Texas motor vehicle record information of another individual we have marked under section 552.130.<sup>2</sup>

To conclude, 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 1703.306 of the Occupations Code. The department must also withhold the information we have marked under section 552.130 of the Government Code. The department must release the remaining information.<sup>3</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 L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/vb

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<sup>2</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general opinion.

<sup>3</sup>We note the submitted information contains the social security numbers of the requestor and another individual. 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. Gov't Code § 552.147(b). The requestor has a right, however, to her own social security number. *See* Gov't Code § 552.023(a); ORD 481 at 4 (privacy theories not implicated when individuals request information concerning themselves). Because the requestor has a special right of access to some of the submitted information pursuant to section 552.023, the department must again seek a decision from this office if it receives a request for this information from a different requestor.

Ref: ID# 407924

Enc. Submitted documents

c: Requestor  
(w/o enclosures)