



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 3, 2011

Ms. Teresa J. Brown  
Sr. Open Records Assistant  
Plano Police Department  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2011-01780

Dear Ms. Brown:

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# 407967 (Plano ORR #CHAJ111110).

The Plano Police Department (the "department") received a request for a specified police report. You claim portions of the submitted information are 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." Gov't Code § 552.101. This section encompasses common-law privacy. For information to be protected from public disclosure by the common-law right of privacy, the information must meet the criteria set out by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court stated information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See* 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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.

Upon review, we find the information we marked is highly intimate or embarrassing and not of legitimate public concern. Thus, the information we marked is generally confidential

under section 552.101 in conjunction with common-law privacy. However, the requestor is the spouse of the individual whose private information is at issue, and may be acting as his spouse's authorized representative. Section 552.023 of the Government Code states a person or a person's authorized representative has a special right of access to information that relates to the person and that is protected from disclosure by laws intended to protect the person's privacy interest. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (governmental body may not deny access to whom information relates or person's authorized representative on grounds that information is considered confidential by privacy principles). If the requestor is the authorized representative of his spouse, then he has a special right of access to information that would ordinarily be withheld to protect privacy interests. Therefore, if the requestor is his spouse's authorized representative, then the department may not withhold the information we marked under section 552.101 in conjunction with common-law privacy. *See* ORD 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). If the requestor is not his spouse's authorized representative, then the department must withhold the information we marked under section 552.101 in conjunction with common-law privacy. However, we find none of the remaining information is highly intimate or embarrassing. Therefore, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5; *see Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985). After review of the remaining information, we find it does not contain information that is confidential under constitutional privacy; therefore, the department may not withhold it under section 552.101 on that ground.

We note portions of the remaining information are subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 provides information relating to a motor vehicle operator's license or driver's license issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1). We marked Texas driver's license information. We note section 552.130 protects personal privacy. As mentioned above, the requestor may be

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

the authorized representative of his spouse, the individual whose Texas driver's license information is at issue. In that instance, the department may not withhold the marked information from this requestor under section 552.130. *See id.* § 552.023. However, if the requestor is not his spouse's authorized representative, the department must withhold the marked information under section 552.130.

In summary, if the requestor is not the authorized representative of the named individual, the department must withhold the information we marked under (1) section 552.101 of the Government Code in conjunction with common-law privacy and (2) section 552.130 of the Government Code. If the requestor is the authorized representative of his spouse, the department must release the marked information. In either case, the department must release the remaining information.<sup>2</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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

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<sup>2</sup>The remaining information contains social security numbers subject to section 552.147 of the Government Code. Section 552.147(b) 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). Section 552.147 is based on privacy concerns. Accordingly, pursuant to section 552.023, the requestor has a right of access to his own social security number, as well as his spouse's social security number if he is acting as her authorized representative. We also note the remaining information contains information to which the requestor has a right of access. *See id.* § 552.023(a); ORD 481 at 4. Thus, 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.

Ref: ID# 407967

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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