



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 8, 2011

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

OR2011-04870

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# 414243.

The Baytown Police Department (the "department") received a request for a specified police report. We understand you will redact social security numbers and partial social security numbers pursuant to section 552.147(b) of the Government Code.<sup>1</sup> You claim some of the requested information is excepted from disclosure under sections 552.101 and 552.130 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 of the Government Code also encompasses the doctrine of common-law 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial*

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<sup>1</sup>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. *See* Gov't Code § 552.147(b).

*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. In addition, this office has found some kinds of medical information or information indicating disabilities or specific illnesses is protected by 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). Upon review, we find a portion of the submitted information, which we have marked, is highly intimate or embarrassing and of no legitimate concern to the public. However, we find you have not demonstrated how the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern.

We note in this instance the requestor may be the insurance provider of the individual whose private information is at issue. Section 552.023 of the Government Code provides “[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.” *See* Gov’t Code § 552.023(a); *see also id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person’s representative, solely on the grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or individual’s authorized representative requests information concerning the individual). Thus, if this requestor is acting as the subject individual’s authorized representative, this requestor has a right of access to information pertaining to that individual that would ordinarily be excepted from disclosure under section 552.101 in conjunction with common-law privacy. Therefore, if the requestor is acting as the authorized representative of the individual whose private information is at issue, the department may not withhold the information at issue from this requestor on the basis of common-law privacy. Otherwise, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code 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. Gov’t Code § 552.130(a)(1), (2). As previously noted, the requestor in this instance appears to represent the insurance provider of the owner of one of the vehicles listed in the submitted information. If this requestor is acting as the authorized representative of the insured party, this requestor has a right of access to its insured’s Texas motor vehicle record information. *See id.* § 552.023(a) (person or person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests); ORD 481 at 4 (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). In this instance, it is not clear the requestor is acting as the vehicle owner’s authorized representative. Therefore, we must rule conditionally. To the extent the requestor has a right of access under section 552.023 to its insured’s Texas

motor vehicle record information, the department must release the insured's motor vehicle record information to the requestor and must withhold the marked Texas motor vehicle record information of the remaining individual under section 552.130 of the Government Code. To the extent this requestor does not have a right of access under section 552.023, the department must withhold all of the marked Texas motor vehicle record information under section 552.130 of the Government Code.<sup>2</sup>

In summary, to the extent the requestor is not the authorized representative of the individual whose information is at issue, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the requestor has a right of access to its insured's Texas motor vehicle record information, the department must release the insured's motor vehicle record information to the requestor and must withhold the marked Texas motor vehicle record information of the remaining individual under section 552.130 of the Government Code. To the extent this requestor does not have a right of access under section 552.023, the department must withhold all of the marked Texas motor vehicle record information under section 552.130 of the Government Code. The remaining information must be released to the requestor.

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,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

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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 Texas driver's license numbers and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)