



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 7, 2011

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

OR2011-16306

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# 435610.

The Baytown Police Department (the "department") received a request for information related to a specified incident involving a named individual. You state the department will redact social security numbers and partial social security numbers pursuant to section 552.147(b) of the Government Code.¹ You indicate the department will redact a license plate number under section 552.130 of the Government Code and an insurance policy number under section 552.136 of the Government Code pursuant to Open Records Decision

¹We note 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.

No. 684 (2009).² You claim some of the remaining requested 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. You claim section 552.101 in conjunction with constitutional privacy, which 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 relating to the “zones of privacy” pertaining to marriage, procreation, contraception, family relationships, and child rearing and education the United States Supreme Court has recognized. *See Fado v. Coon*, 633 F.2d 1172 (5th 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 (5th 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 id.* at 7. Constitutional privacy under section 552.101 is reserved for “the most intimate aspects of human affairs.” *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492). In Open Records Decision No. 430 (1985), this office determined a list of inmate visitors is protected by constitutional privacy because people have a First Amendment right to correspond with inmates, which would be threatened if their names were released. *See also* Open Records Decision Nos. 428 (1985) (logs of certain mail sent or received by inmates protected by constitutional privacy), 185 (1978) (public’s right to obtain inmate’s correspondence list not sufficient to overcome First Amendment right of inmate’s correspondents to maintain communication with inmate free of threat of public exposure). We therefore agree the department must withhold the jail visitor information you have marked, along with the additional information relating to the visitor we have marked, under section 552.101 of the Government Code in conjunction with constitutional privacy.

²Open Records Decision No. 684 is a previous determination authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including a Texas license plate number under section 552.130 of the Government Code and an insurance policy number under section 552.136 of the Government Code. Although we agree the department is authorized to redact the Texas license plate number you have marked, we note Open Records Decision No. 684 does not authorize the department to redact the license year or the vehicle identification number you have marked under section 552.130 without requesting a decision. We also note that on September 1, 2011, the Texas legislature amended section 552.136 of the Government Code to allow a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 27 (to be codified at Gov’t Code § 552.136(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 27 (to be codified at Gov’t Code § 552.136(d), (e)). Thus, the statutory amendments to section 552.136 of the Government Code superceded Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to section 552.136(b) in accordance with section 552.136, not Open Records Decision No. 684.

You also claim section 552.101 in conjunction with common-law privacy, which 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 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 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). We agree the department must withhold the medical information relating to arrested persons you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

We note sections 552.130 and 552.136 of the Government Code are applicable to some of the remaining information at issue.³ Section 552.130 excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state or another state or country. *See* Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). We agree the department must withhold the license year and vehicle identification number you have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides that “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device for purposes of section 552.136. We therefore agree the department must withhold the insurance policy number you have marked under section 552.136 of the Government Code.

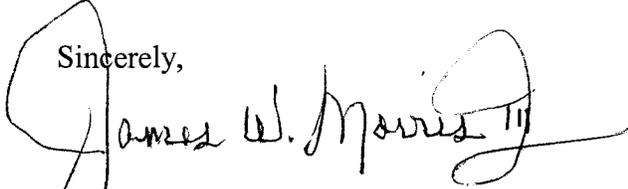
In summary, the department must withhold (1) the marked visitor information under section 552.101 of the Government Code in conjunction with constitutional privacy; (2) the marked medical information under section 552.101 in conjunction with common-law privacy; (3) the marked license year and vehicle identification number under section 552.130 of the Government Code; and (4) the marked insurance policy number under section 552.136 of the Government Code. The rest of the submitted 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.

³This office will raise sections 552.130 and 552.136 on behalf of a governmental body, as these sections are mandatory exceptions to disclosure. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

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 that reads "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal flourish at the end.

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

JWM/em

Ref: ID# 435610

Enc: Submitted documents

c: Requestor
(w/o enclosures)