



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 15, 2013

Mr. Jose Hernandez  
Records Supervisor  
Edinburg Police Department  
1702 South Closner Boulevard  
Edinburg, Texas 78539

OR2013-19990

Dear Mr. Hernandez:

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# 505982 (Ref. No. 54899).

The Edinburg Police Department (the "department") received a request for a specified case report. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor is a representative of a Texas State Senator. Section 552.008 of the Government Code grants access to requested information, including confidential information, to individual members, agencies, or committees of the Texas Legislature. Section 552.008 provides:

- (a) Th[e Act] does not grant authority to withhold information from individual members, agencies, or committees of the legislature to use for legislative purposes.

---

<sup>1</sup>Although you cite to section 552.108 of the Government Code, based on your markings and arguments, we understand you to assert section 552.101 of the Government Code.

(b) A governmental body on request by an individual member, agency, or committee of the legislature shall provide public information, including confidential information, to the requesting member, agency, or committee for inspection or duplication in accordance with this chapter if the requesting member, agency, or committee states that the public information is requested under this chapter for legislative purposes. A governmental body, by providing public information under this section that is confidential or otherwise excepted from required disclosure under law, does not waive or affect the confidentiality of the information for purposes of state or federal law or waive the right to assert exceptions to required disclosure of the information in the future. The governmental body may require the requesting individual member of the legislature, the requesting legislative agency or committee, or the members or employees of the requesting entity who will view or handle information that is received under this section and that is confidential under law to sign a confidentiality agreement that covers the information and requires that:

- (1) the information not be disclosed outside the requesting entity, or within the requesting entity for purposes other than the purpose for which it was received;
- (2) the information be labeled as confidential;
- (3) the information be kept securely; or
- (4) the number of copies made of the information or the notes taken from the information that implicate the confidential nature of the information be controlled, with all copies or notes that are not destroyed or returned to the governmental body remaining confidential and subject to the confidentiality agreement.

...

(c) This section does not affect:

- (1) the right of an individual member, agency, or committee of the legislature to obtain information from a governmental body under other law, including under the rules of either house of the legislature;
- (2) the procedures under which the information is obtained under other law; or

(3) the use that may be made of the information obtained under other law.

Gov't Code § 552.008(a)–(b), (c). In this instance, the requestor is a representative of Texas State Senator Eddie Lucio, Jr. The requestor does not state, however, and it is not otherwise clear to this office, the request was made for legislative purposes. Accordingly, we must rule on the applicability of section 552.008 in the alternative. If the requestor made this request for legislative purposes, then the department must make the submitted information available to her in accordance with section 552.008 of the Government Code. *See id.* § 552.008(b). We note section 552.008 permits a governmental body to require a member of the legislature to sign a confidentiality agreement for the protection of information obtained pursuant to this section. *Id.* In addition, release of this information under section 552.008 does not waive or affect the confidentiality of the information for the purposes of state or federal law or waive the right of the department to assert exceptions to required public disclosure of this information to future requestors. *See id.* But, if this request for information was not made for legislative purposes, then the requested information need not be released under section 552.008, and we will consider your arguments against its public disclosure.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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. *See id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has also found information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the submitted information must be withheld in its entirety to protect the individual's privacy.

In this instance, you seek to withhold the entirety of the submitted information under section 552.101 in conjunction with common-law privacy. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which the submitted information must be withheld in its entirety on that basis. Accordingly, the department may not withhold the entirety of the submitted information under section 552.101 on that basis. However, upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the department must withhold this information under section 552.101 of the Government Code in

conjunction with common-law privacy. However, the department has failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate concern to the public. Therefore, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a). Upon review, we find the department must withhold the motor vehicle record information you have marked, and the additional motor vehicle record information we have marked, under section 552.130 of the Government Code.<sup>2</sup>

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *Id.* § 552.147. Thus, the department may withhold the social security numbers you have marked, and the additional social security numbers we have marked, under section 552.147 of the Government Code.

In summary, if the requestor made the request for legislative purposes, then the department must make the submitted information available to her in accordance with section 552.008 of the Government Code. If the requestor did not make the request for legislative purposes, then the department (1) must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) must withhold the motor vehicle record information you have marked, and the additional motor vehicle record information we have marked, under section 552.130 of the Government Code; (3) may withhold the social security numbers you have marked, and the additional social security numbers we have marked, under section 552.147 of the Government Code; and (4) must release the remaining information.

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.

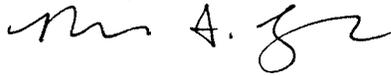
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

---

<sup>2</sup>We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicholas A. Ybarra". The signature is fluid and cursive, with the first name "Nicholas" written in a larger, more prominent script than the last name "Ybarra".

Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/ac

Ref: ID# 505982

Enc. Submitted documents

c: Requestor  
(w/o enclosures)