ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 27, 2014

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

OR2014-01504

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# 511870 (Plano PD# JEFC102513).

The Plano Police Department (the "department") received a request for the report pertaining to a specified incident. You claim some of 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 "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 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. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation. Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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 submitted information must be withheld in its entirety to protect the individual's privacy.

In this instance, although you claim the submitted information is protected in its entirety by common-law privacy, you have not demonstrated, nor does it otherwise appear, this is a situation in which this information must be withheld in its entirety on that basis. However, upon review, we agree portions of the submitted information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation.* Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.[1] The department has failed to demonstrate, however, how 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 this information under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the constitutional right to privacy, which protects two kinds of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); *see also* Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7. The first is the interest in independence in making certain important decisions related to the "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *See Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); *see also* 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); *see also* 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* ORD 455 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). Upon review, we find no portion of the remaining information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Consequently, the department may not withhold any of the remaining information under section 552.101 in conjunction with constitutional privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license or driver's license issued by an agency of this state or another state or country is excepted from public release.[2] Gov't Code § 552.130(a)(1). Upon review, we find

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[1]As our ruling for this information is dispositive, we need not address your remaining argument against its disclosure.

[2]The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

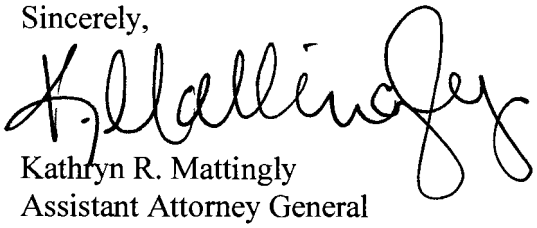
the department must withhold the driver's license information we have marked under section 552.130 of the Government Code.[3]

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, and the driver's license information we have marked under section 552.130 of the Government Code. The department 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, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 511870

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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[3]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).