



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 16, 2014

Ms. Audra Gonzalez Welter
Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2014-08400

Dear Ms. Welter:

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# 523152 (OGC Nos. 154708 and 154876).

The University of Texas at Arlington (the "university") received two requests, from different requestors, for a specified arrest report. You state you will release a majority of the information to the requestors. You also state you will redact information pursuant to section 552.147(b) of the Government Code.¹ You claim portions of the submitted information are 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 representative sample of information.² We have also received and considered the first requestor's comments. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested 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." *Id.*

¹Section 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 under the Act. Gov't Code. § 552.147(b).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

§ 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). We note the submitted information relates to criminal activity. The public has a legitimate interest in knowing the general details of a crime. See generally *Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (5th Cir. 1994)); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (public has legitimate interest in details of crime and police efforts to combat crime in community), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Upon review, we find the information you have marked is not highly intimate or embarrassing information of no legitimate public concern. Therefore, no portion of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses 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. See 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 information must concern the “most intimate aspects of human affairs.” *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). After review of the information at issue, we find you have failed to demonstrate how any portion of the information at issue falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the university may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with constitutional privacy.

You state you will redact information subject to section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). We note, and you acknowledge, section 552.130 protects personal privacy. Thus, the second requestor has a special right of access to his own driver's license information. See *id.* § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from

public disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, the university may not withhold the second requestor's driver's license information from him under section 552.130. However, the university must withhold the driver's license information you have marked, and the additional driver's license information we have marked, from the first requestor under section 552.130 of the Government Code.

In summary, the university must withhold the driver's license information you have marked, and the additional driver's license information we have marked, from the first requestor under section 552.130 of the Government Code. The university must release the remaining information to the requestors.³

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,



Thana Hussaini
Assistant Attorney General
Open Records Division

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³The information being released contains the second requestor's driver's license information. As previously mentioned, the second requestor has a right of access to this information. *See generally* Gov't Code § 552.023; ORD 481. 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). Accordingly, if the university receives another request for this same information from a person who does not have such a right of access, section 552.130(c) authorizes the university to redact the requestor's driver's license information without the necessity of requesting a decision under the Act.

Ref: ID# 523152

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)