



February 11, 2015

Ms. Amanda Pell
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2015-02687

Dear Ms. Pell:

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# 553445 (PIR No. 3698).

The City of Baytown (the "city") received a request for information pertaining to a specified incident. We understand the city will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, 552.137, and 552.152 of the Government Code.² 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 encompasses the doctrine of common-law privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

²Although you do not raise section 552.137 of the Government Code in your brief, we understand you to raise this exception based on your markings.

that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *See id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has concluded 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. Open Records Decision No. 393 at 2 (1983); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App. –El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Upon review, we find the information we marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate the remaining information at issue is highly intimate or embarrassing and of no legitimate public interest. Thus, the city may not withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or 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. Gov't Code § 552.130(a). Upon review, we find the city must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c), and you do not indicate the owner has consented to the release of his e-mail address. Therefore, the city must withhold the personal e-mail address you have marked under section 552.137 of the Government Code.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.152. You inform us the information you have marked relates to undercover police officers. You state release of this information would subject these officers to a substantial threat of physical harm. Based on your representations and our review, we find you have

demonstrated the release of the information at issue would subject the officers at issue to a substantial threat of harm. Thus, the city must withhold the information you have marked under section 552.152 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information you have marked under sections 552.130, 552.137, and 552.152 of the Government Code. The city 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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 553445

Enc. Submitted documents

c: Requestor
(w/o enclosures)