



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 29, 1994

Mr. John C. Foshee
Attorney
Texas Parks & Wildlife Department
4200 Smith School Road
Austin, Texas 78744

OR94-202

Dear Mr. Foshee:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 25874.

The Texas Parks and Wildlife Department (the "department") received an open records request for fourteen categories of information pertaining to its request for bids for the construction of a marina at Lake Ray Roberts. You inform us that the department has released all of the requested records except for two pages of notes that a department employee took during two separate telephone conversations. You contend that portions of those notes come under the protection of section 552.101 of the Government Code because

in each case [the notation] accuses [certain individuals] of cheating and of the crime of insurance fraud. These are bare, defamatory allegations of a highly embarrassing fact which is . . . of no legitimate concern to the public.

You assert that the requested information is excepted from public disclosure by common-law privacy as incorporated into the Open Records Act by section 552.101 of the Government Code, which protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." We infer that you believe that the release of the information will invade the privacy of third parties by placing them in a false light.

This office discussed false-light invasion of privacy at length in Open Records Decision No. 579 (1990) (copy enclosed). As noted in that open records decision, the gravamen of a false light privacy complaint is not that the information revealed is confidential, but that it is false. Because section 552.101 focuses only on the confidentiality of

information, this section does not embrace the tort doctrine of false-light privacy.¹ You have raised none of the act's other exceptions to required public disclosure. Consequently, the department must release these records in their entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



KyMBERLY K. Oltrogge
Assistant Attorney General
Open Government Section

KKO/RWP/rho

Ref.: ID# 25874

Enclosures: Open Records Decision No. 579
Submitted documents

cc: Mr. David Lewis
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(w/o enclosures)

¹We further note that the Texas Supreme Court has called into question whether the tort of false-light privacy exists in this state and that, if in fact the tort does exist, it requires a showing of actual malice as an element of recovery. *See Diamond Shamrock Ref. & Mktg. Co. v. Mendez*, 844 S.W.2d 198, 200-01 (Tex. 1992). This office lacks the fact-finding capability to determine whether the source of any of the information at issue acted with malice in reporting the information to the department.