



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 29, 1994

Ms. Tracy R. Briggs  
Assistant City Attorney  
City of Houston  
Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR94-841

Dear Ms. Briggs:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 29079.

The City of Houston (the "city") has received a request for information relating to a certain shooting incident in which the suspect shot and killed his mother-in-law, shot his wife, and then committed suicide. In addition, the requestor seeks any other information in the city's possession relating to the persons involved in this shooting incident. You advise us that the city will provide the requestor with first-page offense report information in accordance with *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). You object, however, to release of the remaining information, which you have submitted to us for review. You claim that section 552.101 of the Government Code exempts this information from required public disclosure.

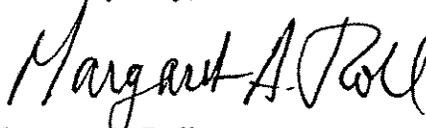
Section 552.101 exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You seek to withhold the requested information in deference to the privacy interests of some of the principals. Information may be withheld under common-law privacy if it meets the criteria the Texas Supreme Court articulated for section 552.101 in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under *Industrial Foundation*, a governmental body must withhold information on common-law privacy grounds only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. The right to privacy

guaranteed under the United States Constitution protects two related interests: (1) the individual's interest in independence in making certain kinds of important decisions, and (2) the individual's interest in avoiding disclosure of personal matters. *See* Open Records Decision No. 478 (1987) at 4. The first interest applies to the traditional "zones of privacy," *i.e.*, marriage, procreation, contraception, family relationships, and child rearing and education. *See* Open Records Decision No. 447 (1986) at 4. The second protects information by employing a balancing test that weighs the privacy interest against the public interest. Open Records Decision No. 478 at 4. It protects against "invasions of privacy involving the most intimate aspects of human affairs." Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985)). Neither common-law nor constitutional privacy, however, protects the interests of a dead person. *See, e.g.*, Open Records Decision No. 432 (1985). In addition, common-law privacy does not, as a rule, protect information relating to a police department's investigation of family violence. *See* Open Records Decision No. 611 (1992).

We have examined the information submitted to us for review. We conclude that it contains some information that is intimate or embarrassing and of no legitimate public concern. This information has been marked and must be withheld from required public disclosure under section 552.101 of the Government Code. The remainder of the submitted information, however, does not contain any information that is intimate or embarrassing and therefore may not be withheld under common-law privacy. Moreover, the submitted information does not contain any information that falls within any of the "zones of privacy" recognized under constitutional privacy doctrine, nor do we believe that release of the submitted information would cause "invasions of privacy involving the most intimate aspects of human affairs." Accordingly, except as marked, the requested information must be released in its entirety.<sup>1</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll  
Assistant Attorney General  
Open Government Section

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<sup>1</sup>Some of the marked information is made confidential by section 81.103 of the Health and Safety Code, which makes HIV test results confidential. *See also* Open Records Decision No. 607 (1992).

MAR/GCK/rho

Ref.: ID# 29079

Enclosures: Marked documents

cc: Ms. Susan C. Balagia  
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Austin, Texas 78701  
(w/o enclosures)