



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 3, 1995

Mr. Richard D. Monroe
Deputy General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg.
125 East 11th Street
Austin, Texas 78701-2483

OR95-1179

Dear Mr. Monroe:

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# 36014.

The Texas Department of Transportation (the "department") received an open records request for a copy of the allegations submitted by the requestor to an individual through the civil rights division and the responses made to the requestor's allegations. You inform us that you have released most of the responsive documents you possess to the requestor. You state that a memorandum dated July 28, 1995, containing the requestor's allegations, and a memorandum dated August 22, 1995, containing the responses, are responsive to the request. You contend that these memorandums contain information that if released would constitute an invasion of certain individuals' right to privacy, and, thus, portions of the memorandums are excepted from required disclosure pursuant to section 552.101 of the Government Code. You have submitted for our review the two documents at issue marked to reflect the portions that you assert are protected by common-law privacy and that you contend may be withheld from disclosure pursuant to section 552.101.

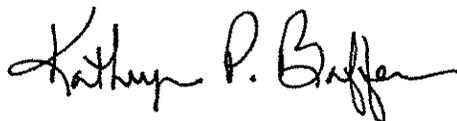
Information may be withheld under common-law privacy if it meets the criteria the Texas Supreme Court articulated for section 552.101 in *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under *Industrial Foundation*, a governmental 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. You contend that the marked information is highly embarrassing and is of minimal value to the public. Additionally, you contend that some of the information if released would present a person in a "false light." We note that false-light privacy is no longer an actionable tort in Texas. *Cain v. Hearst Corp.*, 878 S.W.2d 577, 579 (1994). Consequently, the truth or falsity of information is not relevant under the Open Records Act.

In reviewing the July 28, 1995 memorandum, we find no information that would be protected by common-law privacy. Consequently, you must release the entire memorandum to the requestor. Regarding the August 22, 1995 memorandum, we conclude that you must withhold the information we have marked in item 5 pursuant to section 552.101 and common-law privacy. The remainder of the information in the memorandum is not highly intimate or embarrassing, consequently, it is not protected by common-law privacy and you may not withhold it pursuant to section 552.101. You must withhold only the portions of the August 22, 1995 memorandum that we have marked and you must release the remaining information in the submitted documents to the requestor.

We are resolving this matter with this 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,



Kathryn P. Baffes
Assistant Attorney General
Open Records Division

KPB/rho

Ref: ID# 36014

Enclosures: Marked documents

cc: Mr. Clarence M. Hobbs
1916 King Cole
Waco, Texas 76705
(w/o enclosures)