



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 5, 1996

Ms. Elizabeth C. Lara  
Legal Assistant  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR96-1591

Dear Ms. Lara:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100833.

The Texas Department of Insurance (the "department") received a request for a copy of the department's entire file number 301636, relating to a complaint filed by Sherdeana Owens. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claimed and have reviewed the documents at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Federal tax return information is confidential under federal law. 26 U.S.C. § 6103(a). Therefore, the department must withhold federal tax return information.

Section 552.101 also excepts from required public disclosure information protected by common-law and constitutional privacy. For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing statutory predecessor to Gov't Code § 552.101). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

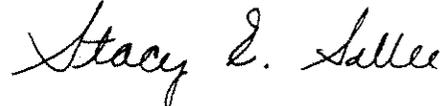
Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently, and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 (1987) at 4. The first type protects an individual's autonomy 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 scope of information protected is narrower than that under the common-law doctrine of privacy; 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)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse or the detailed description of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have reviewed the documents submitted for our consideration and have marked the information that must be withheld under constitutional or common-law privacy.

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 should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/ch

Ref.: ID# 100833

Enclosures: Submitted documents

cc: Ms. Cassandra L. Johnson  
Paralegal  
Wolin, Fuller, Ridley & Miller LLP  
3100 Bank One Center  
1717 Main Street  
Dallas, Texas 75201-4681  
(w/o enclosures)