



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 30, 1998

Mr. Ron M. Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR98-1103

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 114292.

The Texas Department of Public Safety (the "department") received a request for "a copy of all information contained in complaint numbered C97-102." In response to the request, you submitted to this office for review the records which you assert are responsive. You state that "[t]he department is currently releasing most of the file to [the requestor]." You contend, however, that certain portions of the submitted file are excepted from required public disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section also encompasses information protected by other statutes. We note that medical and health information is generally confidential. In Open Records Decision No. 641 (1996), this office determined that medical information obtained pursuant to the Americans with Disabilities Act of 1990 (the "ADA") 42 U.S.C. § 12101 *et seq.*, is confidential. *See also* 29 C.F.R. § 1630.14(b)(1) (providing that medical information "shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record"). Therefore, we conclude that the submitted "Request for Accommodation" must be withheld in its entirety, as well as certain other information which has been marked by our office.

As for the remaining information, we note that section 552.101 also excepts from 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 of the South 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.

Section 552.101 also excepts information that is confidential under constitutional privacy. 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). Accordingly, we have reviewed the information 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.¹ 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,

A handwritten signature in black ink that reads "Sam Haddad". The signature is fluid and cursive, with a large loop at the beginning.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref: ID# 114292

Enclosures: Marked documents

cc: Ms. Janice Cranford
P. O. Box 4087
Austin, Texas 78773-0521
(w/o enclosures)

¹As we resolve this matter under 552.101 of the Government Code, we need not specifically address the applicability of other applicable exceptions at this time. The records at issue also include information that may be confidential pursuant to sections 552.024 and 552.117 of the Government Code. Sections 552.024 and 552.117 provide that a public employee or official can opt to keep private his or her home address, home telephone number, social security number, and information that reveals that the individual has family members.