



May 16, 2000

Mr. M. Shannon Kackley  
Assistant City Attorney  
City of Garland  
P.O. Box 469002  
Garland, Texas 75046-9002

OR2000-1937

Dear Mr. Kackley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135425.

The City of Garland Police Department (the "department") received a request for the arrest report of a named individual. You have submitted the arrest report for our review, and you have marked certain information in the report. You assert that the information you have marked is excepted from disclosure under section 552.101 of the Government Code in conjunction with the common law right to privacy. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses the common law right to privacy. The common law right to privacy protects information 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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

The Texas Supreme Court in *Industrial Foundation* articulated examples of information about private citizens that meets the first prong of this test, and 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. *Id.* at 683. This office has also acknowledged such privacy interests. *See, e.g.*, *Open*

Records Decision Nos. 470 (the fact that a person broke out in hives as a result of severe emotional distress is protected by common law privacy), 455 (1987) (the kinds of prescription drugs a person is taking is protected by common law privacy), 343 (1982) (information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, and emotional/mental distress is protected by common law privacy).

While we do not agree that all of the information you have marked meets the first prong of the common law privacy test, we do agree that some of the information consists of highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person. You argue that the information you have marked “cannot be said to be of a legitimate public concern, or, if it is, the interest of the public cannot be said to outweigh the privacy interest of the person.” You thus characterize the common law privacy test as a *balancing* of interests. We disagree. As stated above, if a legitimate public interest exists in the information at issue, the information is subject to release even if it meets the first prong of the privacy test. The facts before us indicate public resources were spent on this incident. We therefore believe a legitimate public interest exists in much of the information. As both prongs of the common law privacy test have not been met with respect to all of the information you have marked, we conclude that some of the information is not excepted from disclosure by section 552.101 in conjunction with the common law right to privacy. We have marked certain private information in the submitted report which you must redact, as we believe the release of this information serves no public interest. You must redact the information we have marked prior to releasing the report. We conclude that the remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

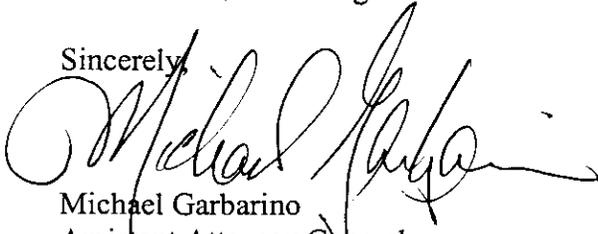
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/pr

Ref: ID# 135425

Encl. Submitted documents

cc: Ms. Grace Ashley  
801 W. Avenue B  
Garland, Texas 75040  
(w/o enclosures)