



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 6, 2009

Ms. Linda M. Champion
Assistant City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2009-01594

Dear Ms. Champion:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 334527.

The City of Victoria (the "city") received two requests for a specific police report. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. 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." Gov't Code § 552.101. This section encompasses the common-law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types 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. *Id.* at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where the requestor knows the identity of the individual at issue and the

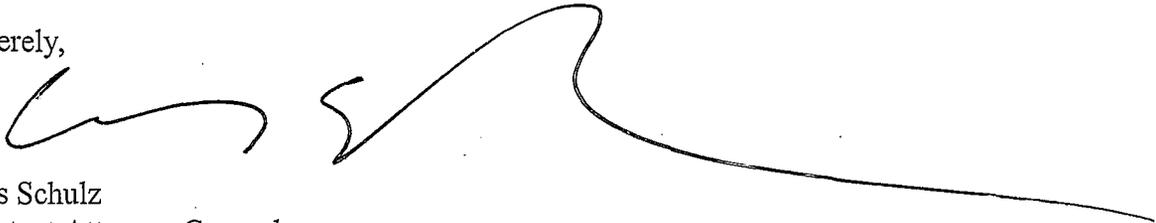
nature of the incident, the entire report must be withheld to protect the individual's privacy. Here, although you seek to withhold the submitted incident report in its entirety, you have not demonstrated, nor does it otherwise appear, that this is a situation where the entire report must be withheld on the basis of common-law privacy. However, we agree that some of the submitted information is highly intimate or embarrassing and not of legitimate concern to the public. Accordingly, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

Additionally, we note that the first requestor is the wife of one of the individuals at issue. The second requestor is the husband of another individual at issue. Accordingly, the requestors may be the authorized representatives of their respective spouses, and, thus, may have a right of access to their spouses' private information. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). If the first requestor is acting as her spouse's authorized representative, the city may not withhold from her any of the information that pertains to her husband under section 552.101 in conjunction with common-law privacy. If the second requestor is acting as his spouse's authorized representative, the city may not withhold from him any of the information that pertains to his wife under section 552.101 in conjunction with common-law privacy. If the requestors are not their spouses' authorized representatives, then the city must withhold all of the marked information under section 552.101 in conjunction with common-law privacy. In any event, the remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Schulz", with a long horizontal flourish extending to the right.

Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 334527

Enc. Submitted documents

cc: Requestor
(w/o enclosures)