



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 5, 2009

Ms. Cheryl K. Byles  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2009-05933

Dear Ms. Byles:

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# 342264 (PIR no. 2105-09).

The City of Fort Worth (the "city") received a request for information related to a former city employee. You state that some of the requested information will be released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy. Common-law privacy protects information that (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 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. *Id.* at 683.

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that 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. In this instance, although you seek to withhold the submitted information in its entirety, you have not demonstrated, nor does it otherwise appear, that this is a situation where the information must be withheld in its entirety on the basis of common-law privacy. However, we agree that portions of the requested information are highly embarrassing and not of legitimate public interest. Accordingly, the city must withhold the information we have marked from the public under section 552.101 in conjunction with common-law privacy.

We note, however, that the requestor may be an authorized representative of the individual who is the subject of this request for information. As the named individual's authorized representative, the requestor would have a right of access under section 552.023 of the Government Code to any information that the city would be required to withhold from the public to protect the individual's privacy.<sup>1</sup> See Gov't Code § 552.023(a). Thus, if the requestor is the named individual's authorized representative, then information relating to the named individual may not be withheld from this requestor on privacy grounds under section 552.101. See Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

Section 552.117(a)(1) excepts from disclosure the current and former home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected under section 552.117(a)(1) must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). You state, and provide documentation showing, that the employee at issue timely elected to keep her information confidential. Thus, the city must withhold the information we have marked from public disclosure under section 552.117(a)(1) of the Government Code. However, if the requestor is the individual's authorized representative and has a right of access under section 552.023, then the city may not withhold the marked information from the requestor under section 552.117 of the Government Code. See Gov't Code § 552.023(a).

In summary, unless the requestor is the individual's authorized representative and has a right of access under section 552.023 of the Government Code, the city must withhold the information we have marked (1) under section 552.101 of the Government Code in

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<sup>1</sup>Section 552.023 provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

conjunction with common-law privacy; and (2) under section 552.117 of the Government Code. The remaining submitted information must be released to the requestor.

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](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 342264

Enc. Submitted documents

c: Requestor  
(w/o enclosures)