



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 22, 2010

Ms. Julia Gannaway  
Lynn, Pham & Ross, LLP  
306 West Broadway Avenue  
Fort Worth, Texas 76104

OR2010-10959

Dear Ms. Gannaway:

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# 387643.

The Burkburnett Police Department (the "department"), which you represent, received a request for all call logs during a specified time period, a transcript or copies of any calls involving a named person or specified address, and copies of all incident reports and affidavits filed in connection with incidents involving a named person during a specified time period. You state you will release a portion of the requested information. You claim that portions of the submitted information are 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 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. Common-law 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. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. 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. *See* 540 S.W.2d at 683. You argue the portions of the information you have marked must be withheld on the basis of common-law privacy. Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, we find the remaining information you seek to withhold is not highly intimate or embarrassing or is of legitimate public interest. Thus, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

We note section 552.1175 of the Government Code may apply to portions of the remaining information.<sup>1</sup> Section 552.1175 provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). If the individual whose personal information is at issue is currently a licensed peace officer under article 2.12 of the Code of Criminal Procedure who elects to restrict access to his information in accordance with section 552.1175(b), the department must withhold the information we have marked under section 552.1175 of the Government Code. If the individual at issue is not currently a licensed peace officer or does not elect to restrict public access to the information in accordance with section 552.1175(b), the department may not withhold this information under section 552.1175.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the individual whose information is at issue is currently a licensed peace officer who elects to restrict access to his information, the department must withhold the information we have marked under section 552.1175 of the Government Code. As you raise no further arguments against disclosure, the remaining information must be released.

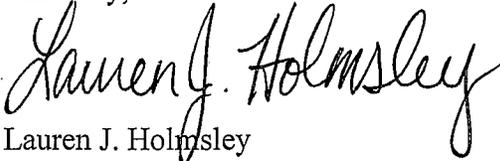
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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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\\_ori.php](http://www.oag.state.tx.us/open/index_ori.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, toll free at (888) 672-6787.

Sincerely,



Lauren J. Holmsley  
Assistant Attorney General  
Open Records Division

LJH/jb

Ref: ID# 387643

Enc. Submitted documents

c: Requestor  
(w/o enclosures)