



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 2, 2010

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2010-11580

Dear Mr. Mann:

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# 388763 (GCA 10-0408).

The Garland Police Department (the "department") received a request for a specified incident report. You state you have released some of the requested information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.108 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 public 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 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). 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). We note that common-law privacy is a personal right that lapses at death and does not protect information relating only to a deceased individual.

See *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Upon review, we agree the information you have marked in blue is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must generally withhold the information you have marked in blue under section 552.101 in conjunction with common-law privacy. We note, however, the submitted information indicates the requestor is the spouse of the individual to whom the submitted information pertains and may have a right of access to this information. See Gov't Code § 552.023(b) (“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”). Thus, if the requestor is acting as the authorized representative of his spouse, then he has a right of access to the information at issue pursuant to section 552.023(b), and this information may not be withheld under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of his spouse, then the department must withhold the information you have marked in blue under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. See *Id.* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. See *id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information you marked in red relates to a criminal investigation that concluded with no charges being filed. Based on your representations and our review, we conclude that the information you have marked in red may be withheld under section 552.108(a)(2) of the Government Code.

In summary, the department must withhold the information you have marked in blue under section 552.101 of the Government Code in conjunction with common-law privacy, unless the requestor is acting as his spouse’s authorized representative. The department may withhold the information you have marked in red under section 552.108(a)(2) of the Government Code. The remaining 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,

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,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/tp

Ref: ID# 388763

Enc. Submitted documents

c: Requestor
(w/o enclosures)