



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 8, 2010

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2010-16932

Dear Ms. Sims:

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# 399334.

The Lubbock Police Department (the "department") received a request for the audio recording of a specified incident. You claim that the requested 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.

Initially, we note some of the information you have submitted is not responsive to the instant request. The request specifically seeks information pertaining to a specified incident. Portions of the submitted video recording do not pertain to that incident. This decision does not address the public availability of the non-responsive information, and the department need not release that information in response to this request.

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 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 or embarrassing by the Texas

Supreme Court in *Industrial Foundation* include 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. Upon review, we find that none of the submitted information is highly intimate or embarrassing and of no legitimate public concern. Therefore, none of the submitted information may be withheld under section 552.101 in conjunction with common-law privacy.

We note the submitted recording contains information that may be excepted under section 552.1175 of the Government Code.¹ Section 552.1175(b) provides in part the following:

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). The submitted recording contains personal information of an officer of the department, which is not held by the department in an employment capacity. If this individual is currently a licensed peace officer and elects to restrict access to this information in accordance with section 552.1175(b), the department must withhold the information we have indicated under section 552.1175. If this individual is not currently a licensed peace officer or does not elect to restrict access to this information in accordance with section 552.1175(b), the department may not withhold the information at issue on that basis.

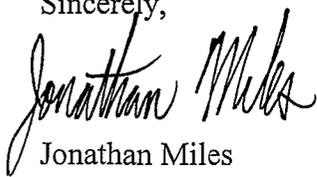
In summary, if the officer whose information is at issue is currently a licensed peace officer and elects to restrict access to his personal information in accordance with section 552.1175(b), the department must withhold the information we have indicated under section 552.1175 of the Government Code. The remaining information must be released.

¹The Office of the Attorney General will raise mandatory exceptions 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_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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/eeg

Ref: ID# 399334

Enc. Submitted documents

c: Requestor
(w/o enclosures)