



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 6, 2010

Ms. Teresa J. Brown
Senior Open Records Assistant
City of Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2010-18203

Dear Ms. Brown:

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# 402027 (ORR #KRAC091310).

The Plano Police Department (the "department") received a request for the call notes pertaining to an incident at a specified address on a specified date. You state the department has provided some of the requested information to the requestor. You claim portions of the submitted call report 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. This exception encompasses the doctrine of common-law privacy, which 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The type of information considered intimate or 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. You generally assert the information you have marked in the submitted call report is protected by common-law privacy. Upon review, we agree the information you

have marked, and the additional information we have marked, is highly intimate or embarrassing and of no legitimate public concern. Therefore, the marked information is subject to common-law privacy.

We note, however, the requestor is the husband of the individual who is the subject of the submitted report. As such, the requestor may be acting as his wife's authorized representative and would have a special right of access to his wife's private information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's authorized representative on grounds that information is considered confidential by privacy principles). Thus, if the requestor is acting as his wife's authorized representative, the marked information is not protected by common-law privacy and the report must be released in its entirety.¹ If the requestor is not acting as his wife's authorized representative, the marked information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.²

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

¹Although you also contend this information is protected under constitutional privacy, we note the requestor would have the same right of access to the information pursuant to section 552.023(b), if he is acting as his wife's authorized representative.

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 402027

Enc. Submitted documents

c: Requestor
(w/o enclosures)