



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 9, 2011

Ms. Kate Fite  
Assistant General Counsel  
Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711

OR2011-01991

Dear Ms. Fite:

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# 408641.

The Office of the Governor (the "governor") received a request for a list of applicants who have shown interest in filling the unexpired term of the 378th District Court, including any application or resume. You state the governor is in the process of releasing some of the responsive information. You claim the submitted 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.

You state that the governor is withholding question three and the answers to this question pursuant to the previous determination of this office in Open Records Letter No. 1997-1048 (1997). In that decision, we determined that the governor may withhold all answers to question number three without the necessity of requesting an attorney general decision as to the applicability of the exception of section 552.101 of the Government Code and the doctrine of common law privacy.<sup>1</sup> See Gov't Code § 552.101; Open Records Letter No. 1997-1048 (1997); see also Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a)). However, Open

---

<sup>1</sup>In Open Records Letter No. 1997-1048, question number three read "Have you ever been treated for or suffered from any form of mental illness? If so, give details."

Records Letter No. 1997-1048 is not a previous determination to withhold question three without seeking a ruling from this office. Therefore, we will address your remaining argument for this information, as well as the remaining 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The types of information considered intimate and 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. 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). Upon review, we agree the submitted "Health Information" forms are highly intimate or embarrassing and of no legitimate public concern. Accordingly, the governor must withhold the "Health Information" forms under section 552.101 of the Government Code pursuant to common-law privacy.

You also ask this office to issue a previous determination that may be relied upon in future requests for the "Health Information" form. See Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). We decline to issue such a previous determination at this time. Accordingly, 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 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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tamara Wilcox', written in a cursive style.

Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/vb

Ref: ID# 408641

Enc. Submitted documents

c: Requestor  
(w/o enclosures)