



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 5, 2011

Mr. Charles H. Weir  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283

OR2011-04679

Dear Mr. Weir:

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# 413557 (COSA File Nos. 2010-7440 and 2010-7441).

The San Antonio Police Department (the "department") received two requests from the same requestor for two specified reports. 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.

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 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. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses to be 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). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

We note report number 90123754 reflects that the requestor knows the nature of the incident to which the report pertains and the identity of the individual involved. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the individual's common-law right to privacy. Accordingly, to protect the individual's privacy, the department must generally withhold report number 90123754 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

Although you also seek to withhold the entirety of report number 90242076, you have not demonstrated, nor does it otherwise appear, this is a situation where the entirety of the report must be withheld on the basis of common-law privacy. Accordingly, report number 90242076 may not be withheld in its entirety under common-law privacy. However, upon review, we have marked portions of the report that are highly intimate or embarrassing and of no legitimate public interest. Accordingly, the department must generally withhold the information we have marked in report number 90242076 under section 552.101 of the Government Code in conjunction with common-law privacy.

We note, however, that the requestor may be the authorized representative of the individual whose privacy interests are at issue in report number 90123754 and the information we have marked in report number 90242076. Accordingly, the requestor may have a special right of access to information that would ordinarily be withheld to protect the individual's common-law privacy interests. *See Gov't Code § 552.023(b)* (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Therefore, if the requestor is the authorized representative of the individual and has a special right of access to report number 90123754 and the information we have marked in report number 90242076, then this information may not be withheld from him under section 552.101 in conjunction with common-law privacy. However, if the requestor does not have a special right of access, then the department must withhold report number 90123754 in its entirety and the information we have marked in report number 90242076 pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if the requestor is the authorized representative of the individual whose privacy interests are at issue, then the department must release report number 90123754 in its entirety and the information we have marked in report number 90242076 to the requestor. However, if the requestor is not the authorized representative of the individual whose privacy interests are at issue, then the department must withhold report number 90123754 in its entirety and

the information we have marked in report number 90242076 under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions to disclosure, the remaining information in report number 90242076 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](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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/eeg

Ref: ID# 413557

Enc: Submitted documents

c: Requestor  
(w/o enclosures)