



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 8, 2011

Ms. Teresa L. Presley
Records Manager
Frisco Police Department
7200 Stonebrook Parkway
Frisco, Texas 75034

OR2011-08167

Dear Ms. Presley:

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# 419854.

The Frisco Police Department (the "department") received a request for information pertaining to a specified incident involving a named individual. You claim 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.

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 common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). 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. 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 submitted information must be withheld in its entirety to protect the individual's privacy.

In this instance, the request reveals that the requestor knows the identity of the individual involved. Furthermore, you copied the requestor on your brief to this office that reveals the nature of the private information at issue.¹ Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right of privacy. Accordingly, we find the submitted information, in its entirety, is generally subject to 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 to whom the submitted information pertains and, thus, 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 the individual to whom the submitted information pertains, then she has a right of access to the submitted information pursuant to section 552.023(b), this information may not be withheld under section 552.101 in conjunction with common-law privacy, and, thus, must be released to this requestor.² If the requestor is not acting as the authorized representative of the individual to whom the submitted information pertains, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

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

¹In the future, the department should redact such information from its brief before sending a copy to the requestor. *See* Gov't Code § 552.301(e-1).

²We note the submitted information is confidential with respect to the general public. Thus, if the department receives another request for this particular information from a requestor who does not have a right of access to the submitted information, then the department should again seek a decision from this office.

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 cursive script that reads "Jennifer Luttrall". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 419854

Enc. Submitted documents

c: Requestor
(w/o enclosures)