



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 20, 2011

Mr. Loren B. Smith  
Olson & Olson L.L.P.  
Wortham Tower, Suite 600  
2727 Allen Parkway  
Houston, Texas 77019

OR2011-08751

Dear Mr. Smith:

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# 421137.

The City of Dickinson (the "city"), which you represent, received a request for information relating to instances during a specified time interval in which disciplinary action was taken against a peace officer as a result of an internal investigation by the city's police department (the "department"). You state some of the requested information either has been or will be released. 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 information you submitted.

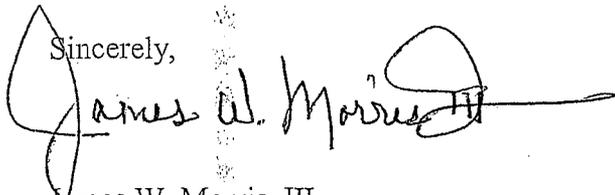
Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. Common-law privacy protects the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has concluded other types of information are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private).

You contend the submitted information is protected by common-law privacy. In this instance, the information at issue consists of records of an investigation of circumstances surrounding a previous internal investigation by the department. The previous investigation involved alleged sexual harassment of an officer of the department. The investigation to which the submitted information pertains resulted in the termination of another officer of the department. We note the public generally has a legitimate interest in public employment and public employees, particularly those who are involved in law enforcement. *See* Open Records Decision No. 444 at 6 (1986) (public has genuine interest in information concerning law enforcement employee's qualifications and performance and circumstances of his termination or resignation). Having considered your arguments and reviewed the submitted information, we conclude some of the information at issue is highly intimate or embarrassing and not a matter of legitimate public interest. The city must withhold that information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. *Cf. Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied). We find the public has a legitimate interest in the rest of the submitted information. *See* ORD 444 at 6; *see also* Open Records Decision Nos. 562 at 10 (1990) (personnel information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 473 at 3 (1987) (fact that public employee received less than perfect or even very bad evaluation not private), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs). We therefore conclude the city may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy. As you claim no other exception to disclosure, the rest of the submitted information must be released.

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,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

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Enc: Submitted documents

c: Requestor  
(w/o enclosures)