



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 26, 2011

Mr. Robert Almonte
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2011-10710

Dear Mr. Almonte:

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# 424902.

The City of El Paso (the "city") received a request for all addresses and telephone numbers associated with a named individual, as well as all information related to case number 10-153249. You state you have released some of the requested information to the requestor. You claim that 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.

Initially, we note the requestor only seeks the telephone numbers and addresses of the named individual, as well information related to case number 10-153249. Thus, the information we have indicated is not responsive to the instant request for information. This ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to this request.

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 that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (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* 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. *See id.* at 683. Generally, only highly intimate or embarrassing information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the information must be withheld in its entirety to protect the individual's privacy. In this instance, although you seek to withhold the submitted responsive information in its entirety, you have not demonstrated, nor does it otherwise appear, this is a situation in which the information at issue must be withheld in its entirety on the basis of common-law privacy. In addition, we find no portion of the submitted responsive information to be highly intimate or embarrassing and not of legitimate public interest. Therefore, none of the submitted responsive information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. You assert the remaining information at issue is protected under constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). In this instance, you have not demonstrated how constitutional privacy applies to the submitted responsive information. Accordingly, the submitted responsive information may not be withheld under section 552.101 of the Government Code in conjunction with constitutional privacy.

Next, we note you have redacted a social security number pursuant to section 552.147 of the Government Code. Section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. However, we note that the social security number you have marked belongs to the requestor. The requestor has a right of access to her own social security number. *See generally* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that

information is considered confidential under privacy principles). As you raise no further exceptions to disclosure, the submitted responsive information must be released.¹

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 424902

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note that the information being released contains the requestor's Texas driver's license information. Ordinarily, this information would be withheld under section 552.130 of the Government Code. However, because this information belongs to the requestor, it may not be withheld in this instance. *See* Gov't Code § 552.023. If the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.