



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 1, 2011

Mr. Whitt L. Wyatt  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Lincoln Plaza  
500 North Akard Street  
Dallas, Texas 75201

OR2011-10987

Dear Mr. Wyatt:

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# 425675.

The City of Allen (the "city"), which you represent, received a request for a report concerning a specified incident. You claim that 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 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 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, the submitted information reflects the requestor knows the identity of the individual involved as well as the nature of the incident at issue. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve

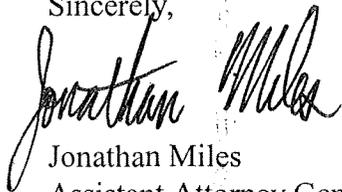
the subject individual's common-law right of privacy. Accordingly, we agree the submitted information must generally be withheld in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

In this instance, however, the requestor may be the authorized representative of the individual whose privacy is at issue. Section 552.023 of the Government Code provides "[a] 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." *See* Gov't Code § 552.023(a); *see also id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on the grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or individual's authorized representative requests information concerning the individual). Therefore, if this requestor is acting as the subject individual's authorized representative, then the submitted information must be released in its entirety to the requestor pursuant to section 552.023.<sup>1</sup> Otherwise, the city 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](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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/em

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<sup>1</sup>In that instance, we note the information being released contains motor vehicle information of the individual involved in the submitted reports, which the city would be required to withhold from the public under section 552.130 of the Government Code. However, that exception protects personal privacy. Thus, if the requestor is this individual's authorized representative, then she also has a right of access to the individual's motor vehicle information under section 552.023.

Ref: ID# 425675

Enc. Submitted documents

c: Requestor  
(w/o enclosures)