



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 4, 2011

Mr. Jason Day
City Attorney
City of Royse City
P.O. Box 638
Royse City, Texas 75189-0638

OR2011-11273

Dear Mr. Day:

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# 426034 (RCCA11-0115).

The City of Royse City (the "city") received a request for a specified incident report. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state you have notified an interested third party of the request for information and of her right to submit arguments to this office as to why the information at issue should not be released.¹ See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted information.

We understand you to raise section 552.101 of the Government Code in conjunction with common-law privacy for the submitted information. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses the doctrine of common-law privacy. Common-law privacy protects information that (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 type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included

¹As of the date of this letter, we have not received any correspondence from this individual.

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 at issue and the nature of the incident, the entire report must be withheld to protect the individual's privacy. In this instance, although you seek to withhold the submitted report in its entirety, you have not demonstrated, nor does it otherwise appear, that this is a situation where the entire report must be withheld on the basis of common-law privacy. Thus, the city may not withhold the submitted report under section 552.101 of the Government Code in conjunction with common-law privacy. Further, you have failed to demonstrate that any portion of the submitted information is highly intimate or embarrassing and not of legitimate public interest. Thus, the city may not withhold any of the submitted information 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 information. Accordingly, the submitted information may not be withheld under section 552.101 of the Government Code in conjunction with constitutional privacy. As you raise no further exceptions to disclosure, 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, 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,

A handwritten signature in black ink, appearing to read 'VB', followed by a long horizontal line.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 426034

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Interested Third Party
(w/o enclosures)