



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 7, 2011

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2011-16288

Dear Ms. Middlebrooks:

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# 435404 (DPD PIR No. 2011-7516).

The Dallas Police Department (the "department") received a request for a specified incident report. You claim some of the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

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 doctrine of common-law privacy, which

¹We assume that the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered to be intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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. Upon review, we find the information you have marked is highly intimate or embarrassing and not of legitimate concern to the public. Accordingly, the department must generally withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, the requestor identifies himself as the spouse of the individual whose privacy interests are implicated. As such, the requestor may be the individual's authorized representative. As the individual's authorized representative, the requestor would have a right of access under section 552.023 of the Government Code to information the department would be required to withhold from the public to protect the individual's privacy. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).² Therefore, if the requestor is the individual's authorized representative, then the department may not withhold the marked information from this requestor under section 552.101 of the Government Code in conjunction with common-law privacy.³ If the requestor is not the individual's authorized representative, then the department must withhold the information you have marked under section 552.101 in conjunction with common-law privacy, but must release the remaining information.

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

²Section 552.023 provides in part that "[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." Gov't Code § 552.023(a).

³In that event, we note the requestor has a special right of access to some of the information being released in this instance. Gov't Code § 552.023. Because such information may be confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling 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 Burnett". The signature is written in black ink and includes a horizontal line extending to the right from the end of the name.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 435404

Enc. Submitted documents

c: Requestor
(w/o enclosures)