



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 29, 2011

Ms. Sylvia. McClellan
Assistant City Attorney
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2011-17576

Dear Ms. McClellan:

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# 437402 (DPD Request No. 2011-8330).

The Dallas Police Department (the "department") received a request for information pertaining to a specified incident. You claim portions of the requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted 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 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

¹We assume that the "representative sample" of records 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.

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. *Id.* at 683.

Upon review, we find that the information you have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must generally withhold the information you have marked, as well as the additional information we have marked, pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, we note the requestor is the spouse of the individual to whom the marked information pertains, and she may be her husband's authorized representative. See Gov't Code § 552.023(b) ("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"). Thus, if the requestor is acting as the authorized representative of her spouse, then she has a right of access to the marked information pursuant to section 552.023(b), and this information may not be withheld from her under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of her spouse, then the department must withhold the marked information under section 552.101 in conjunction with common-law privacy. In either instance, the department 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 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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/ag

Ref: ID# 437402

Enc. Submitted documents

c: Requestor
(w/o enclosures)