



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 4, 2012

Sergeant Rolando Avitia
Sergeant
Brownsville Police Department
600 East Jackson Street
Brownsville, Texas 78520

OR2012-00134

Dear Sergeant Avitia:

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# 441430.

The City of Brownsville (the "city") received a request for a specified incident report, information pertaining to the procedure for issuing proclamations, and information pertaining to who verifies the information stated in proclamations. You claim 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 representative sample of information.

Initially, we note you did not submit for our review information pertaining to the procedure for issuing proclamations or any information pertaining to who verifies the information stated in proclamations. Although you state the city submitted a representative sample of the requested information, we find the submitted information is not representative of these portions of the request. Please be advised this open records letter applies to only the types of information you have submitted for our review. Therefore, this ruling does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office. *See Gov't Code* § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301 of Government Code, information at issue is presumed to be public). Accordingly, because you have not submitted information pertaining to the procedure for

issuing proclamations and information pertaining to who verifies the information stated in proclamations, we assume you have released this information. *See id.* §§ 552.301(a), .302. If the city has not released this information, it must do so at this time to the extent it existed at the time the city received the instant request. *See* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The type of information considered intimate or 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. *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 submitted information must be withheld in its entirety to protect the individual’s privacy.

In this instance, the request reveals the requestor knows the identity of the individual involved but not the nature of certain incidents at issue in the submitted incident report. However, you copied the requestor on your brief to this office that reveals the nature of the private information at issue.¹ 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 find the submitted information, in its entirety, must be withheld 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, or call the Office of the Attorney General’s Open Government Hotline, toll free,

¹In the future, the city should redact such information from its brief before sending a copy to the requestor. *See* Gov’t Code §§ 552.301(e-1), .352(a) (person commits offense if person distributes information confidential under the Act).

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 'Ana Carolina Vieira', with a stylized flourish at the end.

Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/agn

Ref: ID# 441430

Enc. Submitted documents

c: Requestor
(w/o enclosures)