



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 17, 2012

Ms. Teresa J. Brown
Senior Open .Records Assistant
Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2012-16618

Dear Ms. Brown:

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# 468267 (PPD# WALP072712).

The Plano Police Department (the "department") received a request for a specified incident report and witness information. 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 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" and encompasses information made confidential by statute. Gov't Code § 552.101. Section 552.101 of the Government Code encompasses the doctrines of constitutional and common-law privacy. Constitutional privacy protects two kinds of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); *see also* Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *See Fadlo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); *see also* ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir.1985); *see also* ORD 455 at 6-7. This aspect of constitutional privacy balances the

individual's privacy interest against the public's interest in the information. *See* ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492). Upon review, we find no portion of the submitted information falls within the zones of privacy or implicates an individual's privacy interests for the purposes of constitutional privacy. Consequently, the department may not withhold any of the submitted information under section 552.101 in conjunction with constitutional privacy.

Common-law privacy 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, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The type 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. *Id.* at 683. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and handicaps). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public concern.

However, we note the requestor is the daughter of the individual whose information is at issue and may be acting as the individual's authorized representative. If the requestor is the individual's authorized representative, then she has a right of access to the information that would ordinarily be withheld to protect her privacy interests. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond that of general public, to information held by a governmental body that relates to the person and is protected from public disclosure by laws intended to protect privacy interests). Thus, if the requestor is acting as the individual's authorized representative, the department may not withhold any portion of the submitted information under section 552.101 in conjunction with common-law privacy. If the requestor is not the individual's authorized representative, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The remaining 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 "Kristi L. Wilkins". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/ag

Ref: ID# 468267

Enc. Submitted documents

c: Requestor
(w/o enclosures)