



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 2, 2012

Mr. Whitt L. Wyatt
Counsel for the City of Allen
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 North Akard Street
Dallas, Texas 75201

OR2012-17572

Dear Mr. Wyatt:

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# 470184.

The Allen Police Department (the "department"), which you represent, received a request for all police reports pertaining to a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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." Gov't Code § 552.101. This section encompasses the common-law right to privacy, which protects information if it (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be met. *Id.* at 681-82. Common-law privacy protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Additionally, 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 Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987)

(prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public interest. Therefore, the department must generally withhold the marked information under section 552.101 in conjunction with common-law privacy.

However, we note the requestor may be the legal guardian of the individual whose privacy is at issue. In that event, the requestor would be the authorized representative of the individual at issue and would have a special right of access to information that would otherwise be withheld to protect the individual's privacy. *See* Gov't Code § 552.023(a) (person or a person's authorized representative has special right of access, beyond the right of general public, to information held by a governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); *Open Records Decision No. 481 at 4 (1987)* (privacy theories not implicated when individual requests information concerning himself). Because we cannot determine if the requestor is the individual's legal guardian, we rule conditionally. If the department determines the requestor is not the authorized representative of the individual at issue, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and must release the remaining information. If the department determines the requestor is the authorized representative of the individual at issue, the department may not withhold the information we have marked under section 552.101 in conjunction with common-law privacy, but must release the submitted information to this requestor in its entirety.

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

Ref: ID# 470184

Enc. Submitted documents

c: Requestor
(w/o enclosures)
