



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 27, 2012

Ms. Kristy Ashberry
City Secretary
City of Rockwall
385 South Goliad
Rockwall, Texas 75087

OR2012-19047

Dear Ms. Ashberry:

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# 472211.

The Rockwall Police Department (the "department") received a request for information concerning a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code exempts 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 chapter 611 of the Health and Safety Code, which provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002(a) states "[c]ommunications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential." Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. Health & Safety Code § 611.001(b). Upon review, we find the submitted information does not consist of communications between a patient and a professional or records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a

professional. Accordingly, section 611.002 is not applicable, and the department may not withhold the submitted information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also 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. *See 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 established. *See id.* at 681–82. The types 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. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are protected by common-law privacy. *See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).* Generally, only highly intimate or embarrassing information implicating the privacy of an individual is withheld. However, in certain situations where the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. Although you seek to withhold the report under common-law privacy, we find this is not a situation in which the entire report must be withheld to protect an individual's privacy interest. However, we find the information we have marked is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information is not highly intimate or embarrassing and may not be withheld on that basis.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country. Gov't Code § 552.130(a). Accordingly, the department must withhold the information we have marked under section 552.130 of the Government Code.¹

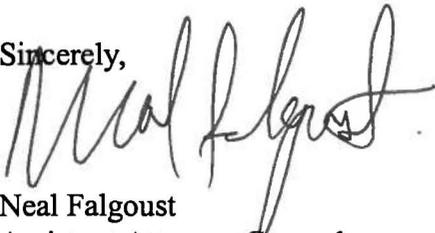
In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the information we have marked under section 552.130 of the Government Code. The remaining information must be released.

¹Section 552.130 of the Government Code permits a governmental body to redact certain motor vehicle record information without requesting a decision from this office. *See Gov't Code § 552.130(c)–(e).*

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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 472211

Enc. Submitted documents

c: Requestor
(w/o enclosures)