



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 11, 2013

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2013-00698

Dear Ms. Byles:

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# 476077 (PIR No. W021064).

The Fort Worth Fire Department (the "department") received a request for a specified report. You claim "some or all" of the requested 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." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law 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 established. *Id.* at 681-82.

The type of information considered highly 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 excepted from required public disclosure under 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).* This office also

has concluded other types of information are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that 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 submitted information in its entirety, you have not demonstrated, nor does it otherwise appear, this is a situation in which the submitted information must be withheld in its entirety on the basis of common-law privacy. Upon review, we find some of the submitted information is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, none of the remaining information may be withheld under section 552.101 on the basis of common-law privacy.

To summarize: 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 must be released to the requestor.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 476077

Enc. Submitted documents

c: Requestor
(w/o enclosures)