



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 20, 2013

Mr. Charles H. Weir  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283

OR2013-02830

Dear Mr. Weir:

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# 480448 (COSA File No. W012007).

The City of San Antonio (the "city") received a request for case number 11026470. 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section 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. *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. 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 entire report must be withheld to protect the individual's privacy.

You seek to withhold the submitted information in its entirety on the basis of common-law privacy. In this case, you have not demonstrated this is a situation in which the information at issue must be withheld in its entirety on the basis of common-law privacy. Therefore, the city may not withhold these records in their entirety under section 552.101 of the Government Code. However, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must generally withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. Because you have not demonstrated how the remaining information is highly intimate or embarrassing, this information may not be withheld under section 552.101 in conjunction with common-law privacy.

We note, however, the requestor may be acting as the authorized representative of the individual whose privacy interests are at issue. As such, the requestor may have a right of access to the information at issue under section 552.023 of the Government Code, which provides in part that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a); *see* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself). Thus, if the requestor is acting as the authorized representative of the individual whose privacy interests are at stake, he has a right of access to the marked information pursuant to section 552.023 of the Government Code, and it may not be withheld from him under section 552.101 of the Government Code in conjunction with common-law privacy. In this event, the submitted information must be released to the requestor in its entirety. However, if the requestor is not acting as the authorized representative of the individual whose privacy interests are at stake, the city must withhold the marked information under section 552.101 in conjunction with common-law privacy. In this event, 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](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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/ag

Ref: ID# 480448

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

