



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 5, 2013

Mr. John R. Batoon  
Assistant City Attorney  
Office of the City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2013-13505

Dear Mr. Batoon:

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# 495648.

The El Paso Police Department (the "department") received a request for the 9-1-1 transcripts related to a specified address for a specified time period. 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.

You raise section 552.101 of the Government Code in conjunction with common-law and constitutional privacy for the submitted information.<sup>1</sup> This section encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information 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 elements of this test must be satisfied. *Id.* at 681-2. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual

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<sup>1</sup>Although you also state the information at issue is "protected by a statutory grant of confidentiality; a judicial grant of confidentiality, . . ." you have not directed our attention to any other state or federal statute, nor are we aware of any such statute, that would make the submitted information confidential. *See, e.g.*, Open Records Decision No. 478 at 2 (1987) (statutory confidentiality).

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 also found that 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 No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). 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 information must be withheld in its entirety to protect the individual's privacy.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently, and (2) an individual's interest in avoiding disclosure of personal matters. *Id.* at 4. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5<sup>th</sup> Cir. 1985)).

In this instance, although you seek to withhold the submitted information in its entirety on the basis of common-law privacy, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on this basis. However, upon review, we agree that portions of the submitted information are highly intimate or embarrassing and not of legitimate concern to the public. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>2</sup> However, we find you have failed to demonstrate how any of the remaining information is highly intimate or embarrassing and not of legitimate concern to the public or falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Accordingly, none of the remaining information may be withheld under section 552.101 in conjunction with common-law or constitutional privacy.

We note portions of the remaining information are subject to section 552.130(a)(2) of the Government Code, which excepts from disclosure information related to "a motor vehicle title or registration issued by an agency of this state or another state or country[.]"<sup>3</sup>

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<sup>2</sup>As our ruling for this information is dispositive, we need not address your remaining argument against its disclosure.

<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Gov't Code § 552.130(a)(2). Accordingly, the department must withhold the license plate information we have marked under section 552.130(a)(2) of the Government Code.<sup>4</sup>

In summary, the department must withhold the information we have marked under (1) section 552.101 of the Government Code in conjunction with common-law privacy and (2) section 552.130(a)(2) of the Government Code. The department must release the remaining information.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/bhf

Ref: ID# 495648

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. See Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See Gov't Code § 552.130(d), (e).