



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 21, 2013

Ms. Samantha Dyal
Fulbright & Jaworski, L.L.P.
300 Convent Street, Suite 2100
San Antonio, Texas 78205

OR2013-14642

Dear Ms. Dyal:

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# 497198.

The Schertz Police Department (the "department"), which you represent, received a request for information related to a specified incident involving a named individual. You claim 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of this test must be established. *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 that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the submitted information must be withheld in its entirety to protect the individual's privacy. In this instance, the report reveals that the requestor knows the identity of the individual involved as well as the nature of the submitted information. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right of privacy.

However, we note the requestor may be the authorized representative of the individual whose privacy interests are at issue, and may have a right of access to information pertaining to that individual that would otherwise be confidential under common-law privacy. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Because we are unable to determine whether the requestor is the authorized representative of the individual at issue, we must rule conditionally.

Accordingly, if the requestor is not acting as the authorized representative of the individual whose privacy interests are at issue, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is acting as the authorized representative of the individual whose privacy interests are at issue, the department may not withhold the submitted information from the requestor under section 552.101 of the Government Code on this basis, but instead, must release the submitted information to this requestor.¹

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, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

¹Because the requestor may have a special right of access to the information being released in this instance, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office. *See* Gov't Code §§ 552.023, .301, .302; Open Records Decision No. 673(2001).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cindy Nettles', written in a cursive style.

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 497198

Enc. Submitted documents

c: Requestor
(w/o enclosures)