ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 28, 2014

Mr. Daniel Ortiz
Assistant City Attorney
Office of the City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2014-15187

Dear Mr. Ortiz:

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# 534622 (14-1026-4480).

The El Paso Police Department (the "department") received a request for information pertaining to a specified incident, as well as any additional information pertaining to a named individual. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code.[1] We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention the department did not timely request a ruling from this office as required by section 552.301(b) of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See id.* § 552.301(b). You state the department received the request on June 9, 2014, and inform us

[1]Although you also raise section 552.101 in conjunction with constitutional privacy for the submitted information, you provide no arguments explaining how this doctrine is applicable to the information at issue. Therefore, we assume you no longer assert this doctrine. *See* Gov't Code §§ 552.301, .302.

the City of El Paso (the "city") was closed for business on June 13 and 20. Thus, the department's ten-business-day deadline was June 25, 2014. We note the envelope in which you submitted your request for a ruling to this office bears a meter mark of June 23, 2014. *See id.* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Furthermore, although the requestor notes the request to our office is dated June 25, 2014, we note the request was received by our office on June 25, 2014. Because the department requested a decision from this office within the ten-business-day deadline, we find the department complied with section 552.301(b) of the Government Code.

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 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, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987).

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 at issue and the nature of the incident, the entire report must be withheld to protect the individual's privacy. In this instance, although you seek to withhold one of the submitted reports in its entirety, you have not demonstrated, nor does it otherwise appear, this is a situation where the entirety of that report must be withheld on the basis of common-law privacy. However, we agree some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The department has failed to demonstrate, however, how any of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the department may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy. As you raise no other exceptions, 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.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,

Tamara H Holland

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/bhf

Ref: ID# 534622

Enc. Submitted documents

c: Requestor
(w/o enclosures)