



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 9, 2014

Ms. Teresa J. Brown
Senior Open Records Assistant
City of Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2014-15871

Dear Ms. Brown:

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# 535502 (Plano Tracking Nos. GRIJ061614, GRIJ071114).

The Plano Police Department (the "department") received two requests from the same requestor for 9-1-1 audio recordings and reports pertaining to six specified incidents. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted audio recording labeled "PLPD13-113001" is not responsive to the requests for information because it does not pertain to any of the six incidents specified in the request. This ruling does not address the public availability of any information not responsive to the instant requests, and the department need not release any non-responsive information in response to these requests.

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. This section encompasses the doctrines of common-law and constitutional privacy. Common-law privacy 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).

Upon review, we find some of the responsive information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note the requestor states in his request for information he is the "secondary on" the power of attorney for the individual whose privacy interests are at issue. Accordingly, he may be acting as the authorized representative of this individual. Section 552.023 of the Government Code gives a person or a person's authorized representative 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 disclosure by laws intended to protect that person's privacy interests. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, if the requestor is not acting as the authorized representative of the individual at issue, the department must withhold the information you have marked and the information we have marked in the submitted documents, as well as the types of information we have indicated in the responsive audio recordings, under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is acting as the individual at issue's authorized representative, he has a special right of access to the information at issue, and it may not be withheld from this requestor under section 552.101 on the basis of that individual's common-law privacy interests. In either case, we find you have failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the remaining information may not be withheld under section 552.101 of the Government Code in conjunction with common-law 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. Open Records Decision No. 455 at 4 (1987). 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 (5th Cir. 1985)). Upon review, we find you have failed to demonstrate any portion of the remaining responsive information falls within the zones of privacy or implicates an individual's privacy interests for purposes of

constitutional privacy. Therefore, the department may not withhold any of the remaining responsive information under section 552.101 on the basis of constitutional privacy.

In summary, if the requestor is not acting as the authorized representative of the individual at issue, the department must withhold the information you have marked and the information we have marked in the responsive documents, as well as the types of information we have indicated in the responsive audio recordings, under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining responsive 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, 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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 535502

Enc. Submitted documents

c: Requestor
(w/o enclosures)