



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 17, 2014

Mr. Brandon S. Shelby
City Attorney
City of Sherman
P.O. Box 1106
Sherman, Texas 75091

OR2014-20860

Dear Mr. Shelby:

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# 543501 (Sherman OR-1583).

The Sherman Police Department (the "department") received a request for information pertaining to a specified report. You state you will release some of the information to the requestor. You indicate you will redact information pursuant to section 552.130(c) of the Government Code.¹ You claim portions of the submitted information are excepted from disclosure under section 552.148 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.² Section 552.101 encompasses the doctrine of common-law privacy, which

¹We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* 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 id.* § 552.130(d),(e).

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 the information we have marked 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 of the Government Code in conjunction with common-law privacy.

Section 552.148 of the Government Code provides the following:

- (a) In this section, “minor” means a person younger than 18 years of age.
- (b) The following information maintained by a municipality for purposes related to the participation by a minor in a recreational program or activity is excepted from the requirements of Section 552.021:
 - (1) the name, age, home address, home telephone number, or social security number of the minor;
 - (2) a photograph of the minor; and
 - (3) the name of the minor’s parent or legal guardian.

Gov’t Code § 552.148. You state some information, which you have marked, contains personal information protected under section 552.148. Section 552.148 specifically applies to “information maintained by a municipality[.]” *Id.* § 552.148(b). Because the department is not a municipality, section 552.148 of the Government Code will not apply in this instance, and the department may not withhold any information on this basis. *See Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865-66 (Tex. 1999) (in interpreting statutes, goal of discerning legislature’s intent is served by beginning with statute’s plain language because it is assumed that legislature tried to say what it meant and its words are therefore surest guide to its intent); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 324 (Tex App.—Austin 2002, no pet.) (citing *Sorokolit v. Rhodes*, 889 S.W.2d 239, 241 (Tex. 1994)) (in applying plain and common meaning of statute, one may not by implication enlarge meaning of any word beyond its ordinary meaning, especially when one can discern legislative intent from reasonable interpretation of statute as written). As no further exceptions against disclosure have been raised, the remaining submitted 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,

A handwritten signature in black ink that reads "Ellen Webking". The signature is written in a cursive style with a large, prominent "E" and "W".

Ellen Webking
Assistant Attorney General
Open Records Division

EW/ac

Ref: ID#543501

Enc. Submitted documents

c: Requestor
(w/o enclosures)