



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 25, 1994

Mr. Burton F. Raiford
Commissioner
Texas Department of Human Services
P.O. Box 14930
Austin, Texas 78714-9030

OR94-685

Dear Mr. Raiford:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552. We assigned your request ID# 28250.

The Texas Department of Human Services (the "department") has received a request for information relating to an investigation conducted by the department's Civil Right's Division. Specifically, the requestor seeks "any and all documentation related to me, whether by name or inference included in the review conducted in Region 08 that resulted from my expressed concerns." You advise us that the department will make some of the requested information available to the requestor. You have submitted the remaining information to us for review, however, and claim that section 552.101 of the Government Code exempts it from required public disclosure.

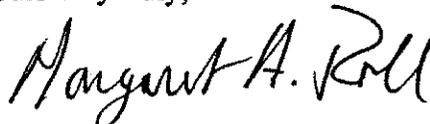
Section 552.101 exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert section 552.101 in conjunction with common-law and constitutional privacy. Information may be withheld under common-law privacy if it meets the criteria the Texas Supreme Court articulated for section 552.101 in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under *Industrial Foundation*, a governmental body must withhold information on common-law privacy grounds only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. While common-law privacy may protect an individual's medical history, *see, e.g.*, Open Records Decision Nos. 539 (1990); 455 (1987); 422 (1984), it does not protect all medically related information, *see*

Open Records Decision No. 478 (1987). Individual determinations are required.¹ Open Records Decision No. 370 (1983). The right to privacy guaranteed under the United States Constitution protects two related interests: (1) the individual's interest in independence in making certain kinds of important decisions, and (2) the individual's interest in avoiding disclosure of personal matters. See Open Records Decision No. 478 (1987) at 4. The first interest applies to the traditional "zones of privacy," *i.e.*, marriage, procreation, contraception, family relationships, and child rearing and education. See Open Records Decision No. 447 (1986) at 4. The second protects information by employing a balancing test that weighs the privacy interest against the public interest. Open Records Decision No. 478 at 4. It protects against "invasions of privacy involving the most intimate aspects of human affairs." Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985)).

We have examined the information submitted to us for review. We conclude that it contains some information that is intimate or embarrassing and of no legitimate public concern. This information has been marked and must be withheld from required public disclosure under section 552.101 of the Government Code. The remainder of the submitted information, however, does not contain any information that is intimate or embarrassing and therefore may not be withheld under common-law privacy. Moreover, the submitted information does not contain any information that falls within any of the "zones of privacy" recognized under constitutional privacy doctrine, nor do we believe that release of the submitted information would cause "invasions of privacy involving the most intimate aspects of human affairs." Accordingly, except as marked, the requested information must be released in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

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¹This office has determined that common-law privacy protects the following medical information: the kinds of prescription drugs a person is taking, Open Records Decision No. 455 (1987); the results of mandatory urine testing, *id.*; the fact that a person attempted suicide, Open Records Decision No. 422 (1984); the names of parents of victims of sudden infant death syndrome, Attorney General Opinion JM-81 (1983); and information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress, Open Records Decision No. 343 (1982).

Ref.: ID# 28250

Enclosures: Marked documents

cc: Mr. Mr. Barbara Ford-Young
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030
(w/o enclosures)