



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 6, 1995

Mr. Scott A. Durfee  
General Counsel  
Harris County District Attorney  
201 Fannin, Suite 200  
Houston, Texas 77002-1901

OR95-169

Dear Mr. Durfee:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32324.

The Harris County District Attorney's Office (the "district attorney") has received a request for "video and audio recordings of John Aiken Bishop, trying to solicit a bribe from defense attorney Robert Piro." You contend that section 552.101 of the Government Code in conjunction with common-law privacy excepts the tapes from required public disclosure. You had also claimed that various other provisions of the Open Records Act applied to this request; however, we understand that you have withdrawn your arguments under sections 552.103, 552.107, and 552.108 of the Government Code. Thus, we only address your arguments regarding common-law privacy.

Section 552.101 of the act excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Information must be withheld from required public disclosure under common-law privacy if it meets the criteria articulated for section 552.101 by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Information must be withheld on the basis of common-law privacy, if:

- (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and
- (2) the information is not of legitimate concern to the public.

*Industrial Found.*, 540 S.W.2d at 685. In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that 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; *see also* Open Records Decision Nos. 470 (1987) (concluding that fact that person broke out in hives as result of severe emotional distress is excepted by common-law privacy), 455 (1987) (concluding that kinds of prescription drugs person is taking are protected by common-law privacy), 343 (1982) (concluding that information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress is protected by common-law privacy).

We have reviewed the tapes submitted for our review. We believe that there is a legitimate public interest in the information regarding the alleged bribe and subsequent arrest of the defendant. However, the audio tape entitled "Piro's Message to Callers on His Answering Machine" contains information that is not responsive to this request. The district attorney need not release information on this tape that is unrelated to the alleged bribery. However, the district attorney must release to the requestor all the remaining information on the audio and video tapes.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

LRD/rho

Ref.: ID# 32324

Enclosures: Submitted video and audio tapes

cc: Ms. Ariadne Allan  
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(w/o enclosures)