



Office of the Attorney General  
State of Texas

February 24, 1997

DAN MORALES  
ATTORNEY GENERAL

Ms. Elaine S. Hengen  
Assistant City Attorney  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR97-0419

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 104128.

The El Paso Police Department (the "department") received a request for the report in case number 96-296269. You state that the document involves family relationships, child rearing and educational matters. You, therefore, ask whether the requested information is excepted from required public disclosure under section 552.101 of the Government Code because it is confidential by a right of privacy. We have considered the exception you claim and have reviewed the document at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses both common-law and constitutional privacy. Common-law privacy excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

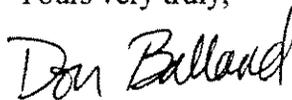
The constitutional right to privacy protects two interests. Open Records Decision No. 600 (1992) at 4 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court. Open Records Decision No. 600 (1992) at 4. The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.* Once a determination is made that a matter is within a constitutionally protected zone of privacy, one must balance this privacy interest against the public's interest in access to

such information. *See* Open Records Decision No. 628 (1994), 455 (1987) at 7 (citing federal cases discussing constitutional disclosure and privacy).

The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 (1987) at 5-7 (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the "most intimate aspects of human affairs." *See* Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). We have previously stated that there may be circumstances where disclosure of information may detrimentally influence family relationships or child rearing, or may involve the "most intimate aspects of human affairs." Open Records Decision No. 628 (1994); *see also* Attorney General Opinion JM-81 (1983) (holding that the identities of parents of victims of Sudden Infant Death Syndrome are protected by constitutional privacy); Open Records Decision No. 455 (1987) at 5. However, a determination of the applicability of constitutional privacy must be made on a case-by-case basis, weighing the individual's right to privacy against the public's interest in disclosure of the information. *See* Open Records Decision No. 628 (1997), 455 (1987) at 7. After reviewing the submitted materials in this case, we do not believe that the requested document is excepted from disclosure by a right of privacy.<sup>1</sup> *But see* Attorney General Opinion JM-81 (1983); Open Records Decision No 628 (1994) (identity of juvenile victims of serious sexual offenses is protected by common-law privacy). The requested information in this case must be released.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard  
Assistant Attorney General  
Open Records Division

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<sup>1</sup>Because our decision under section 552.101 is dispositive, we need not consider your questions under section 552.023 or section 552.222 of the Government Code.

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Enclosures: Submitted documents

cc: Mr. Felix M. Tellez  
1002 Geronimo  
El Paso, Texas 79905  
(w/o enclosures)

