



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 29, 1998

Ms. Donna Garcia Davidson
Office of the Governor
Post Office Box 12428
Austin, Texas 78711

OR98-0276

Dear Ms. Davidson:

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# 112502.

The Office of the Governor (the "Governor") received requests for the applications of the people who have applied for the district judgeship of the 199th Judicial District Court. You inform this office that you have released most of the requested information to the requestor, but seek our decision whether the remaining information is exempted from disclosure pursuant to section 552.101 of the Government Code in conjunction with a right of privacy. We have considered your arguments and have reviewed the information submitted.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision and incorporates the doctrine of common-law privacy. For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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 type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information 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. 540 S.W.2d at 683.

The constitutional right to privacy protects two interests. Open Records Decision No. 600 (1992) at 1 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1000 (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.*

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 Fado 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)).*

This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps),* personal financial information not relating to the financial transaction between an individual and a governmental body, *see Open Records Decision Nos. 600 (1992), 545 (1990),* information concerning the intimate relations between individuals and their family members, *see Open Records Decision No. 470 (1987),* and identities of victims of sexual abuse or the detailed description of sexual abuse, *see Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).*

We have reviewed the document submitted for our consideration and conclude that the information may not be withheld under constitutional or common-law privacy. Thus, the information must be released to the requestor.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 112502

Enclosures: Submitted documents

cc: Mr. Daun Eierdam
The Courier-Gazette
P.O. Box 400
McKinney, Texas 75070
(w/o enclosures)