



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 3, 2009

Ms. Luz E. Sandoval-Walker  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza, 9th Floor  
El Paso Texas 79901

OR2009-02748

Dear Ms. Sandoval-Walker:

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# 336119.

The El Paso Police Department (the "department") received a request for information pertaining to a specified incident. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, the governmental body must meet both prongs of this test. *Id.* at 681-82. 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. *Id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in

certain instances where it is demonstrated that the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, the submitted information reveals that the requestor knows the identity of the individual involved, as well as the nature of the information in the submitted report. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, we find that the entire report is subject to common-law privacy and must generally be withheld under section 552.101 of the Government Code.

We note, however, that the requestor is an investigator at the Texas Department of Aging and Disability Services ("DADS"). The interagency transfer doctrine provides that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinion No. GA-0055 (2003); Open Records Decision Nos. 680 at 7 (2003), 667 at 3-4 (2000). However, an interagency transfer of confidential information is prohibited where a confidentiality statute enumerates specific entities to which release of confidential information is authorized, and the requesting agency is not among the statute's enumerated entities. *See* Attorney General Opinion DM-353 at 4 n.6 (1995); Open Records Decision No. 661 at 3 (1999). Common-law privacy does not consist of a confidentiality statute that enumerates specific entities to which release of the confidential information is authorized. Thus, under the interagency transfer doctrine the department has the discretion to release to DADS the submitted information that is confidential under common-law privacy.<sup>1</sup>

In summary, pursuant to the interagency transfer doctrine, the department has the discretion to release the submitted information in its entirety. However, should the department choose not to exercise its discretion under the interagency transfer doctrine, the department must withhold the submitted information in its entirety pursuant to section 552.101 in conjunction with common-law privacy.<sup>2</sup>

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.

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<sup>1</sup>We also note that although a representative of the requestor, acting on behalf of DADS, asserts that DADS is authorized by Chapter 242 of the Texas Health and Safety Code to obtain medical records, the submitted information does not contain medical records.

<sup>2</sup>As our ruling is dispositive, we need not address your argument under section 552.108 of the Government Code.

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Paige Savoie  
Assistant Attorney General  
Open Records Division

PS/eeg

Ref: ID# 336119

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)