



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 27, 2009

Mr. Clark McCoy
Wolfe, Tidwell & McCoy, L.L.P.
259 Dallas Parkway, Suite 205
Frisco, Texas 75034

OR2009-05518

Dear Mr. McCoy:

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# 341339.

The City of Anna (the "city"), which you represent, received a request for information pertaining to a school bus collision which occurred on November 19, 2008; specifically including "a copy of the police report, any and all investigation reports, any and all witness statements, copies of any and all video and/or audio recordings . . . and the blood alcohol results from the driver of the bus." You state the city has released or intends to release most of the responsive information. You claim the information contained in the videos requested is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. In addition, this office has found that the following types of information are excepted from required public disclosure under 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); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). This office has also found that information concerning domestic violence generally does not come within the scope of common-law privacy. *See* Open Records Decision No. 611 (1992) ("An assault by one family member on another is a crime, not a family matter normally considered private"). Upon review, we find none of the information contained in the submitted videos constitutes highly intimate or embarrassing information of no legitimate concern to the public. Thus, the submitted information may not be withheld under section 552.101 in conjunction with common-law privacy.

You also assert that the submitted information is confidential under constitutional privacy, which is also encompassed by section 552.101 of the Government Code. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). We find none of the information in the submitted videos falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Consequently, the videos may not be withheld under section 552.101 in conjunction with constitutional privacy. As you raise no further exceptions against disclosure, the submitted videos must be released to the requestor.

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.

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, 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 341339

Enc. Submitted documents

c: Requestor
(w/o enclosures)