



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 17, 2009

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

OR2009-08395

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# 350692.

The El Paso Police Department (the "department") received a request for a specified incident report. You claim that the submitted information 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 (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate applicability of common-law privacy, both prongs of this test must be established. *See 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 workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d 668. 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.

Upon review, we find that the submitted information pertains to this type of incident, and we note that the requestor knows the identity of the individual at issue as well as the nature of the incident. Accordingly, to protect the privacy of the individual to whom the information relates, the department must withhold the submitted report in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

We note, however, that this requestor is the wife of the individual to whom the submitted information pertains. As such, the requestor may have a special right of access to the submitted information as the authorized representative of the individual to whom it pertains. *See Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative requests information concerning that individual).*<sup>1</sup> If the requestor has a right of access to the submitted information as the individual's authorized representative under section 552.023, then the department may not withhold any of the submitted information from the requestor on privacy grounds under section 552.101 and must release this information to the requestor. If the requestor does not have a right of access under section 552.023, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

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](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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/sdk

---

<sup>1</sup>Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."

Ref: ID# 350692

Enc. Submitted documents

c: Requestor  
(w/o enclosures)