



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 28, 2009

Mr. C. Corey Fickes
Taylor, Olson, Adkins, Sralla & Elam
I-30 at Bryant-Irvin Road
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2009-10414

Dear Mr. Fickes:

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# 348921.

The City of Richland Hills (the "city"), which you represent, received a request for all documents distributed by Richland Hills City Council members to other council members during a specified council meeting and pertaining to a specified agenda item. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.148 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

You contend that the submitted information is confidential under common-law and constitutional privacy. 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. You raise section 552.101 in conjunction with constitutional and common-law privacy. Constitutional privacy protects two kinds of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the "zones of privacy," pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. *See Fado v. Coon*, 633 F.2d 1172 (5th Cir. 1981); Open Records Decision No. 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); Open Records Decision No. 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. *See Open*

¹While the city claims section 552.101 of the Government Code in conjunction with section 552.148, we note that exceptions under the Act do not constitute statutory law for purposes of section 552.101.

Records Decision No. 455 at 7. Constitutional privacy is reserved for “the most intimate aspects of human affairs.” *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492).

Common-law privacy 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. *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.

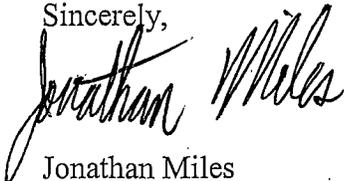
Upon review, we find that portions of the submitted information fall within the zones of privacy discussed above for purposes of constitutional privacy. Thus, this information, which we have marked, must be withheld under section 552.101 in conjunction with constitutional privacy.² However, we conclude that none of the remaining information is protected by either constitutional or common-law privacy.

In summary, the city must withhold the information we have marked pursuant to section 552.101 in conjunction with constitutional privacy. The remaining information must be released.

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

²As our ruling is dispositive of the information you seek to withhold under section 552.148 of the Government Code, we need not address your argument under that exception.

Ref: ID# 348921

Enc. Submitted documents

c: Requestor
(w/o enclosures)