



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 1, 2009

Mr. Mark G. Daniel  
Evans, Daniel, Moore & Evans  
Sundance Square  
115 West Second Street, Suite 202  
Fort Worth, Texas 76102

OR2009-12334

Dear Mr. Daniel:

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# 353948 (Watauga PIR No. 09-253).

The Watauga Police Department (the "department"), which you represent, received a request for a specified offense report. You claim 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," and encompasses information made confidential by other statutes. Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy. 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.

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 at issue and the nature of the incident, the entire report must be withheld to protect the individual's privacy. In this instance, although you seek to withhold the submitted information in its entirety, you have not demonstrated, nor does it otherwise

appear, that this is a situation where the information must be withheld in its entirety on the basis of common-law privacy. However, we agree that portions of the requested information are highly intimate or embarrassing and not of legitimate public interest. Accordingly, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

We note, however, the requestor may be an authorized representative of the individual whose right to privacy is involved. As the individual's authorized representative, the requestor would have a right of access under section 552.023 of the Government Code to any information the department would be required to withhold from the public to protect the individual's privacy. *See Gov't Code § 552.023(a)* (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Thus, if the requestor is the individual's authorized representative, then information relating to the individual at issue may not be withheld from this requestor on privacy grounds under section 552.101. *See Open Records Decision No. 481 at 4 (1987)* (privacy theories not implicated when individual requests information concerning himself). If the requestor is not the individual's authorized representative, then the department must withhold the information we have marked in the submitted information under section 552.101 in conjunction with common-law privacy and must release the remaining information 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](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, toll free, at (888) 672-6787.

Sincerely,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

Ref: ID# 353948

Enc. Submitted documents

c: Requestor  
(w/o enclosures)