



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 29, 2009

Ms. Teresa J. Presley
Records Manager
City of Frisco
7200 Stonebrook Parkway
Frisco, Texas 75034

OR2009-13645

Dear Ms. Presley:

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# 356605.

The City of Frisco (the "city") received a request for information pertaining to a specified incident. 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release 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 (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 involved, as well as the nature of certain incidents, the submitted information must be withheld in its entirety 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 submitted information. 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, the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

However, we note that the submitted information indicates that the individual to whom the information pertains is the requestor's spouse. If the requestor is the spouse's authorized representative, then she has a right of access to his private information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a).¹ Thus, if the requestor is acting as the authorized representative of her spouse, then she has a right of access to the submitted information pursuant to section 552.023(b), and it may not be withheld under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of her spouse, then the city must withhold the submitted information in its entirety under section 552.101 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, 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,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/tl

¹Section 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." Gov't Code § 552.023(a).

Ref: ID# 356605

Enc. Submitted documents

c: Requestor
(w/o enclosures)