



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2009

Mr. Bryan McWilliams
Public Safety Legal Advisor
Assistant City Attorney
City of Amarillo
P.O. Box 1971
Amarillo, Texas 79105-1971

OR2009-15119

Dear Mr. McWilliams:

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# 359167.

The Amarillo Police Department (the "department") received a request for information relating to a specified incident. 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of privacy, which protects information that (1) contains highly intimate or embarrassing information, 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 (Tex. 1976). The types 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 the requestor knows the identity of the individual at issue and the nature of certain incidents, the entire report must be withheld 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 information in the report. 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 department must generally 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 requestor is the spouse of the individual to whom the marked information pertains. If the requestor is the spouse's authorized representative, then he has a right of access to information pertaining to his spouse that would otherwise be confidential pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a).¹ Thus, if the requestor has a right of access under section 552.023, then the submitted information may not be withheld from him on privacy grounds. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Conversely, if the requestor does not have a right of access under section 552.023, then the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

Finally, you ask this office to issue a previous determination regarding the type of information at issue in the instant case. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). We decline to issue such a previous determination at this time. Accordingly, this letter ruling is limited to the particular records 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 records 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,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/jb

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# 359167

Enc. Submitted documents

c: Requestor
(w/o enclosures)