



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 12, 2009

Ms. Teresa J. Brown
Senior Open Records Assistant
Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2009-16072

Dear Ms. Brown:

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# 361287.

The Plano Police Department (the "department") received a request for information pertaining to a named individual and three specified addresses for a specified period of time. You state that you have released some of the requested information. You claim some of 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 information protected by other statutes, including section 611.002(a) of the Health and Safety Code, which pertains to mental health records. This section reads as follows:

Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

Health & Safety Code § 611.002(a); *see id.* § 611.001 (defining "patient" and "professional"). We have marked mental health records that the department must withhold

under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that were held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (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). In addition, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See Open Records Decision Nos. 470* (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have marked information within the submitted information that is both highly intimate or embarrassing and of no legitimate concern to the public. This information must be withheld under section 552.101 in conjunction with common-law privacy. However, you have failed to demonstrate how any of the remaining information is highly intimate or embarrassing or not of legitimate public interest. Therefore, the department may not withhold any portion of the remaining information at issue under section 552.101 in conjunction with common-law privacy.

You claim that remaining records may also be subject to constitutional privacy. Constitutional privacy is also encompassed by section 552.101 of the Government Code and consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. *Open Records Decision No. 455* at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). You have failed to submit any arguments that explain how release of any portion of the remaining information would impair an individual's right to make certain kinds of decisions independently or would implicate an individual's interest in avoiding disclosure of personal matters. Accordingly, none of the remaining information may be withheld under section 552.101 in conjunction with constitutional privacy.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to ... a motor vehicle operator's or driver's license or permit issued by an agency of this state

[or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130(a).¹ Accordingly, the department must withhold the Texas motor vehicle record information we have marked under section 552.130.

In summary, the department must withhold the mental health records we have marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. The department must also withhold the information we have marked under section 552.101 in conjunction with common-law privacy and the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released 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, 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,



PaigeLay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 361287

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).