



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 17, 2009

Mr. Robert E. Reyna
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2009-16314

Dear Mr. Reyna:

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# 361610 (COSA File Nos. 2009-4221 and 2009-4227).

The San Antonio Police Department (the "department") received two requests for information pertaining to a specified incident. You claim that portions of the submitted information are 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. This section encompasses information protected by the doctrine of common-law privacy, which 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. The type of information considered intimate or 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 the information we have marked is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the marked information is generally confidential under section 552.101 in conjunction with common-law privacy.

We note, however, that one of the requestors is the individual whose privacy interest is at issue and the other requestor may be the authorized representative of the individual whose privacy interest is at issue. Accordingly, the requestor whose privacy interest is at issue has a right of access to information that would ordinarily be withheld to protect her common-law

privacy interests and the other requestor may have a special right of access to the marked information as well. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Accordingly, the submitted information may not be withheld from the requestor whose privacy interest is at issue under section 552.101 based on common-law privacy. As you raise no further exceptions against disclosure, the submitted information must be released to that requestor.

With respect to the other requestor, to the extent that requestor is the authorized representative of the individual and has a special right of access to the marked information, it may not be withheld from him under section 552.101 in conjunction with common-law privacy. However, to the extent the other requestor does not have a special right of access, the marked information must be withheld from that requestor pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the submitted information must be released to the requestor whose privacy interest is at issue and to the other requestor if he is that individual's authorized representative. To the extent the other requestor is not that individual's authorized representative, the marked information must be withheld from him pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. In that instance, the remaining information must be released to the other 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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

Ref: ID# 361610

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)