



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2009

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

OR2009-17038

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# 363451 (COSA File No. 2009-4375).

The City of San Antonio (the "city") received a request for information regarding a specific 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information 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. To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. Furthermore, 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) (information pertaining to illness from severe emotional and job-related stress protected by common-law privacy), 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure). Upon review, we find the submitted report contains information that is highly intimate or embarrassing and not of legitimate public interest. Therefore, this information, which we have marked, is generally confidential under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information in the report is not highly intimate or embarrassing information that is of no legitimate public interest. Accordingly, the remainder of the report is not subject to section 552.101 in conjunction with common-law privacy.

We note that the requestor in this instance may be the authorized representative of the individual whose private information is at issue. If the requestor is the authorized representative of this individual, then she has a special right of access to information that would ordinarily be withheld to protect his privacy interests. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests). If the requestor has a right of access under section 552.023, then the city may not withhold the information at issue 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 city must withhold the information we have marked pursuant to section 552.101 in conjunction with common-law privacy.

In summary, if the requestor is not the individual's authorized representative, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

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,

A handwritten signature in black ink, appearing to read "Mack T. Harrison", with a long horizontal flourish extending to the right.

Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/rl

Ref: ID# 363451

Enc. Submitted documents

c: Requestor
(w/o enclosures)