



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 11, 2011

Mr. Peter G. Smith
City Attorney
City of Richardson
P.O. Box 831078
Richardson, Texas 75083-1079

OR2011-02143

Dear Mr. Smith:

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# 408927 (File No. 10-791).

The Richardson Police Department (the "department") received a request for a specified police report. You claim that the requested 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. This section encompasses 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *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.

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 at issue and the nature of the incident, the entire report must be withheld to protect the individual's privacy. You assert that the submitted information must be withheld in its entirety in this instance. However, we find you have not demonstrated, nor does it otherwise appear, that this is a situation where the entirety of this report must be withheld on the basis of common-law privacy. You also assert the information you have highlighted is subject to common-law privacy. Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the department must generally withhold the information we have marked under common-law privacy. The department has failed to demonstrate, however, how the remaining information it has marked is highly intimate or embarrassing and not of legitimate public interest. Therefore, the department may not withhold any portion of the remaining information it has marked under section 552.101 in conjunction with common-law privacy.

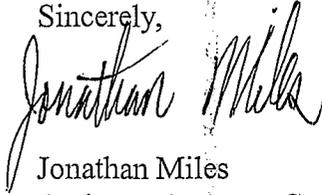
We note in this instance the requestor may be the insurance provider of the individual whose private information is at issue. Section 552.023 of the Government Code provides "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information 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." *See* Gov't Code § 552.023(a); *see also id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on the grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or individual's authorized representative requests information concerning the individual). Thus, if this requestor is acting as the subject individual's authorized representative, he has a right of access to information pertaining to that individual that would ordinarily be excepted from disclosure under section 552.101 in conjunction with common-law privacy. Therefore, if the requestor is acting as the authorized representative of the individual whose private information is at issue, the department may not withhold the information we have marked from this requestor on the basis of common-law privacy. Otherwise, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions, 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 cursive script that reads "Jonathan Miles".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 408927

Enc. Submitted documents

c: Requestor
(w/o enclosures)