



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 10, 2011

Ms. Neera Chatterjee
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701

OR2011-03341

Dear Ms. Chatterjee:

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# 411039 (OGC# 134655).

The University of Texas Southwestern Medical Center at Dallas (the "university") received a request for a specified audio recording. You claim the submitted information is not subject to the Act. Alternatively, 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.

Initially, we address your assertion that pursuant to section 181.006 of the Health and Safety Code, the submitted information is not subject to the Act. Section 181.006 provides in part that "[f]or a covered entity that is a governmental unit, an individual's protected health information . . . is not public information and is not subject to disclosure under [the Act]." Health & Safety Code § 181.006(2). We will assume, without deciding, that the university is a covered entity. Section 181.006(2) does not remove protected health information from the Act's application, but rather states that such information is "not public information and is not subject to disclosure under [the Act]." We interpret this language to mean that a covered entity's protected health information is subject to the Act's application. Furthermore, section 181.006, when demonstrated to be applicable, makes confidential information it covers. Thus, we will consider your arguments for 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 that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. 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. *See id.* at 683. This office has also found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find portions of the submitted information are highly intimate or embarrassing and not of legitimate public concern. However, we note the information at issue pertains to the requestor and the requestor's spouse. Section 552.023 of the Government Code states a person or a person's authorized representative has a special right of access to information that relates to the person and that is protected from disclosure by laws intended to protect the person's privacy interest. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (governmental body may not deny access to whom information relates or person's authorized representative on grounds that information is considered confidential by privacy principles). Thus, the requestor has a right of access to his own private information pursuant to section 552.023, and it may not be withheld under section 552.101 in conjunction with common-law privacy. *See* Gov't Code § 552.023. Additionally, because the requestor is the spouse of the other individual whose private information is at issue, he may be acting as his spouse's authorized representative. If the requestor is the authorized representative of his spouse, then he has a special right of access to information that would ordinarily be withheld to protect her privacy interests. Therefore, if the requestor is his spouse's authorized representative, then the university may not withhold the information relating to her and noted on the submitted audio recording under section 552.101 in conjunction with common-law privacy. *See* ORD 481 at 4. If the requestor is not his spouse's authorized representative, then the university must withhold the information we noted on the submitted audio recording under section 552.101 in conjunction with common-law privacy. We note, however, that if the university lacks the technical capability to redact the portions of the submitted audio recording we have noted, the university must withhold the submitted audio recording in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 also encompasses constitutional privacy. Constitutional privacy 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. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7. 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. ORD 455 at 4. 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.* at 7. The scope of information protected is narrower than that under the common-law doctrine of privacy; constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find you have failed to demonstrate how any of the remaining information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the university may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of constitutional privacy.

In summary, if the requestor is not acting as his spouse's authorized representative, then the university must withhold the information we noted on the submitted audio recording under section 552.101 in conjunction with common-law privacy. In that instance, if the university lacks the technical capability to redact the portions of the submitted audio recording we have noted, the university must withhold the submitted audio recording in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is acting as his spouse's authorized representative, the submitted audio recording must be released in its entirety.¹

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

¹We note the information being released contains confidential information to which the requestor has a right of access. See Gov't Code § 552.023. Thus, if the university receives another request for this particular information from a different requestor, then the university should again seek a decision from this office.

Ref: ID# 411039

Enc. Submitted documents

c: Requestor
(w/o enclosures)