



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 1, 2014

Ms. Delietrice Henry
Open Records Assistant
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2014-07338

Dear Ms. Henry:

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# 521376 (ORR #WILW021314 and BEYT040214).

The Plano Police Department (the "department") received two requests from different requestors for information pertaining to a specified incident report. The second requestor also seeks information pertaining to a second specified incident report. You claim 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, which protects information that is (1) highly intimate or embarrassing, the publication of which 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, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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 involved, as well as the nature of certain incidents, the information must be withheld in its entirety to protect the individual's privacy.

In this instance, the second requestor knows both the identity of the individual involved as well as the nature of the incident in report number 2013-00164515. Additionally, while the first requestor only knows the identity of the individual, the department has revealed the nature of the incident in its brief. Therefore, withholding only the individual's identity or certain details of this incident from the requestors would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the department must withhold report number 2013-00164515 in its entirety from the requestors under section 552.101 of the Government Code in conjunction with common-law privacy.

Additionally, we note portions of report number 2013-0097560, which is responsive to the second requestor's request, meet the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information in report number 2013-0097560 is highly intimate or embarrassing and of no legitimate public concern, and the department may not withhold any of the remaining information in report number 2013-0097560 under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of 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. 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)). After review of the remaining information, we find you have failed to demonstrate how any portion of the information at issue falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the department may not withhold any of the remaining information in report number 2013-0097560 under section 552.101 on the basis of constitutional privacy.

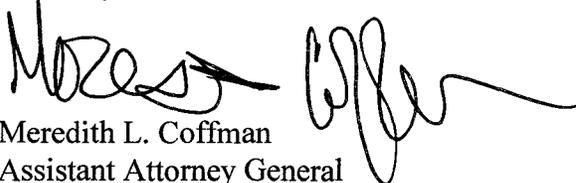
In summary, the department must withhold report number 2013-00164515 in its entirety from the requestors under section 552.101 of the Government Code in conjunction with

common-law privacy. The department must withhold the information we have marked in report number 2013-0097560 from the second requestor. The remaining information in report number 2013-0097560 must be released to the second 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,


Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 521376

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)