



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 23, 2015

Ms. Teresa J. Brown
Senior Open Records Assistant
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2015-05498

Dear Ms. Brown:

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# 557295 (Plano Tracking #PRIP122914).

The Plano Police Department (the "department") received a request for the police report for a certain incident. You state the department has released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ We have considered the exceptions 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). Upon review, we find most of

¹Although you do not raise section 552.130 of the Government Code in your brief, we understand you to assert this exception based on your markings.

the information you have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the information we have marked for release, the department must generally withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note the requestor is the spouse of the individual whose information is at issue and may be this individual's authorized representative. In that instance, the requestor has a right of access to the information pertaining to her spouse that would otherwise be confidential under common-law privacy. *See* Gov't Code § 552.023(a) ("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 that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, if the requestor is acting as the authorized representative of her spouse, then the department may not withhold the information at issue under section 552.101 on the basis of common-law privacy. If the requestor is not acting as her spouse's authorized representative, then, with the exception of the information we have marked for release, the department must withhold the information you have marked under section 552.101 in conjunction with common-law privacy.² However, we find you have failed to demonstrate how the remaining information you have marked is highly intimate or embarrassing and of no legitimate public concern. Consequently, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with 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. *See* ORD 455 at 4. 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 portion of the remaining information under section 552.101 of the Government Code on the basis of constitutional privacy.

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

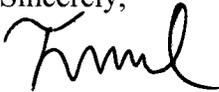
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. We note section 552.130 protects privacy interests and the information at issue pertains to the requestor's spouse. As noted above, the requestor may be acting as her spouse's authorized representative, and may have a right of access to information pertaining to her spouse that would otherwise be confidential. *See id.* § 552.023; *see* ORD 481 at 4. Accordingly, if the requestor is acting as the authorized representative of her spouse, then the department may not withhold the information you have marked under section 552.130. If the requestor is not acting as her spouse's authorized representative, then the department must withhold the information you have marked under section 552.130.

In summary, if the requestor is not acting as her spouse's authorized representative, the department must withhold the information you have marked, with the exception of the information we have marked for release, under section 552.101 of the Government Code in conjunction with common-law privacy, as well as the information you have marked under section 552.130 of the Government Code. If the requestor is acting as her spouse's authorized representative, the department must release the submitted information in its entirety.

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 557295

Enc. Submitted documents

c: Requestor
(w/o enclosures)