



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 22, 2015

Mr. Daniel Ortiz
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2015-12251

Dear Mr. Ortiz:

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# 570445 (El Paso Ref. No. 15-1026-6126).

The El Paso Police Department (the "department") received a request for information related to a specified incident. 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 "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 the information we have marked meets 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 none of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Therefore, the department may not withhold any of the remaining information under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy, which 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 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 under section 552.101 of the Government Code on the basis of constitutional privacy. As you raise no further exceptions to disclosure, 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.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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 570445

Enc. Submitted documents

c: Requestor
(w/o enclosures)