



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 10, 2015

Ms. Katherine R. Fite
Assistant General Counsel
Texas Department of Information Resources
P.O. Box 13564
Austin, Texas 78711-3564

OR2015-25883

Dear Ms. Fite:

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# 596541.

The Texas Department of Information Resources (the "department") received a request for the personnel files of two named former department employees. You state the department has released some of the requested information. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you provide documentation showing you have notified one of the former employees of his right to submit comments to this office why the information at issue should not be released.¹ *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released). 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

¹As of the date of this letter, this office has not received comments from any third party explaining why any of the submitted information should not be released.

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 you have not demonstrated the information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold the information at issue under section 552.101 in conjunction with common-law privacy. The department must release the submitted information.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 596541

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Thomas Johnson
2807 Benbrook Drive
Austin, Texas 78727
(w/o enclosures)