



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

June 6, 2016

Mr. Omar A. De La Rosa  
Assistant City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2016-12864

Dear Mr. De La Rosa:

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# 613093 (El Paso Ref. No. 16-1026-7277).

The El Paso Police Department (the "department") received a request for information pertaining to a specified incident. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> 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

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with constitutional privacy, you make no arguments to support this doctrine. Therefore, we assume you have withdrawn your claim section 552.101 in conjunction with constitutional privacy applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found some kinds of medical information are excepted from required public disclosure under common-law privacy. Open Records Decision No. 455 (1987).

Upon review, we find some of the submitted information satisfies 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 you have failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest, or it pertains to an individual who has been de-identified and whose privacy interests are, thus, protected. Therefore, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions to disclosure, the department must release the remaining 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](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,



Lee Seidlits  
Assistant Attorney General  
Open Records Division

CLS/bw

Ref: ID# 613093

Enc. Submitted documents

c: Requestor  
(w/o enclosures)