



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 10, 2017

Mr. Neal Falgoust
Assistant City Attorney
City of Austin
P. O. Box 1088
Austin, Texas 78767-8828

OR2017-07427

Dear Mr. Falgoust:

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# 652841 (PIR# 31937).

The City of Austin (the "city") received a request for a specified position statement and a certain deposition transcript. You claim some of 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 representative sample of information.

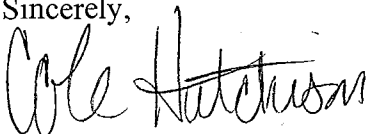
Initially, we note you have only submitted information responsive to the portion of the request seeking a certain deposition transcript. Although you state the city submitted a representative sample of information, the submitted information is not representative of both types of information requested. Thus, we find the submitted information is not representative of the specified position statement. This open records letter applies to only the type of information you have submitted for our review. Therefore, this ruling does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301 of the Government Code, information at issue is presumed to be public). Thus, to the extent the specified position statement was maintained by the city on the date the city received the request for information, we presume the city has released such information. If not, the city must do so at this time. *See id.* §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

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 or 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 you have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no other arguments against disclosure, the city must release the remaining responsive 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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/eb

Ref: ID# 652841

Enc. Submitted documents

c: Requestor
(w/o enclosures)