



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 27, 2017

Ms. Derenda Rush
Service Division
Amarillo Police Department
200 Southeast Third Avenue
Amarillo, Texas 79101-1514

OR2017-09029

Dear Ms. Rush:

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# 654904 (Request 17-270).

The Amarillo Police Department (the "department") received a request for a specified incident report and witness statement. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 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 if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is 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. In addition, this office has found that some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). We further note common-law privacy generally protects the identifying information of juvenile victims of abuse or neglect. *See* Open Records Decision

No. 394 (1983); *cf.* Fam. Code § 261.201. Upon review, we find most of the information you have marked in the remaining information 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 withhold the information you have marked, along with the additional information we have marked, under section 552.101 in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information you have marked is highly intimate or embarrassing and of no legitimate public interest. Thus, the remaining information you have marked may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175(b). Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Some of the remaining information pertains to an individual whose information may be subject to section 552.1175. Thus, except for the information we have marked for release, to the extent the information you have marked pertains to an individual whose information is subject to section 552.1175(a), and the individual elects to restrict access to this information in accordance with section 552.1175(b), the department must withhold the information at issue under section 552.1175 of the Government Code. If the individual whose information is at issue is not subject to section 552.1175(a) or no election is made, the department may not withhold this information under section 552.1175 of the Government Code. However, some of the information you marked pertains to the ex-spouse of a peace officer. This information, which we have marked for release, may not be withheld under section 552.1175. Accordingly, we find you have failed to demonstrate the applicability of section 552.1175 to any of the remaining information you have marked. Therefore, the department may not withhold any of the remaining information, which we have marked for release, under section 552.1175.

In summary, with the exception of the information we have marked for release, the department must withhold the information you have marked, along with the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. Except for the information we have marked for release, to the extent the information you have marked pertains to an individual whose information is subject to section 552.1175(a), and the individual elects to restrict access to this information in accordance with section 552.1175(b), the department must withhold the information you

have marked under section 552.1175 of the Government Code. The department must release the remaining information.¹

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/sdk

Ref: ID# 654904

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note some of the information being released contains confidential information to which the requestor has a right of access. See Gov't Code § 552.023(a) (person or person's authorized representative has special right of access to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, if the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.