



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

February 14, 2018

Mr. Stephen D. Gates  
First Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR2018-03576

Dear Mr. Gates:

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# 695223 (Reference # M0022364-12717).

The City of Midland (the "city") received a request for information pertaining to four specified incidents. 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 from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses 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 (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). Additionally, this office has concluded some

kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987).

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual at issue and the nature of the incident, the entire report must be withheld to protect the individual's privacy. In this instance, report numbers #MP171108967 and #MP170018018 reveal the requestor knows the identity of the individual involved as well as the nature of the incident at issue in this report. Therefore, withholding only the individual's identity or certain details of the incident at issue from the requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the city must generally withhold report numbers #MP171108967 and #MP170018018 in their entireties under section 552.101 of the Government Code in conjunction with common-law privacy. Although we understand you seek to withhold the remaining reports in their entireties, you have not demonstrated, nor does it otherwise appear, that this is a situation where the entirety of the reports must be withheld on the basis of common-law privacy. However, we agree that portions of the remaining submitted reports are highly embarrassing and not of legitimate public interest. Accordingly, the city must generally withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

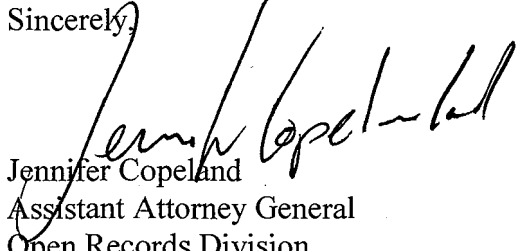
We note, however, that the requestor is the spouse of the individual to whom the information at issue pertains and may have a right of access to this information. *See* Gov't Code § 552.023(b) ("person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests"). Thus, if the requestor is acting as the authorized representative of his spouse, then he has a right of access to report numbers #MP171108967 and #MP170018018 and the marked information pursuant to section 552.023(b), and this information may not be withheld under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of his spouse, the city must withhold report numbers #MP171108967 and #MP170018018 in their entireties and the information we have marked in the remaining reports under section 552.101 of the Government Code in conjunction with common-law privacy. 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,



Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/gw

Ref: ID# 695223

Enc. Submitted documents

c: Requestor  
(w/o enclosures)