



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 31, 2019

Mr. Evan D. Reed
Assistant City Attorney
City of El Paso
P. O. Box 1890
El Paso, Texas 79950

OR2019-14384

Dear Mr. Reed:

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# 768421 (El Paso Ref. #19-1026-10309).

The El Paso Police Department (the "department") received a request for 9-1-1 call information pertaining to a specified incident. 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 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 we have marked and indicated satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information we have marked and indicated under section 552.101 in conjunction with common-law privacy.¹ However, we find you have failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not withhold the remaining information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. *Id.* at 4. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490, 492 (5th Cir. 1985)).

You contend the remaining information is protected under constitutional privacy. Having considered your arguments and reviewed the information at issue, we find you have not demonstrated the remaining information falls within the zones of privacy or otherwise implicates an individual's privacy interests for the purposes of constitutional privacy. We therefore conclude the department may not withhold the remaining information under section 552.101 in conjunction with constitutional privacy.

In summary, the department must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information.

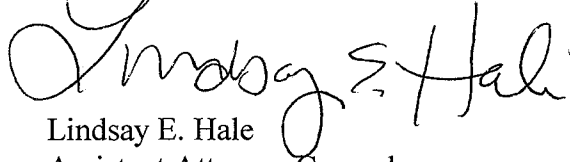
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive style with a large initial "L" and "H".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/jxd

Ref: ID# 768421

Enc. Submitted documents

c: Requestor
(w/o enclosures)