



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 22, 2020

Mr. Thomas L. McMillian
Assistant City Attorney
City of Amarillo
200 Southeast 3rd Avenue, 4th Floor
Amarillo, Texas 79101-1514

OR2020-23824

Dear Mr. McMillian:

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# 845520 (Ref. No. 20-1844).

The Amarillo Police Department (the "department") received a request for certain types of police records related to reports made by the requestor.¹ You state you have released some information to the requestor. 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

¹ The department states it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987).

The submitted information contains information that satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. 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 involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, one of the submitted reports reveals the requestor knows the identity of the individual involved as well as the nature of the information. Therefore, withholding only the individual's identity or certain details of this incident from this 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 department must withhold the information pertaining this report, which we marked, in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. We note the remaining information does not pertain to a situation in which the information must be withheld in its entirety on the basis of common-law privacy. Nevertheless, the department must withhold the information we marked and indicated in the remaining information under section 552.101 in conjunction with common-law privacy. However, upon review, we find you have failed to demonstrate any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not withhold any of the remaining information under section 552.101 on this basis.

In summary, the department must withhold the report we marked in its entirety from this requestor and the information we marked and indicated in the remaining information 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Michelle Garza
Assistant Attorney General
Open Records Division

MG/jm

Ref: ID# 845520

Enc. Submitted documents

c: Requestor
(w/o enclosures)