



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 17, 2022

Mr. Chris Kadas
Attorney
Texas Parks & Wildlife Department
4200 Smith School Road
Austin, Texas 78744-3291

OR2022-24604

Dear Mr. Kadas:

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# 966767 (Dept. ID No. R000735-032322).

The Texas Parks & Wildlife Department (the "department") received a request for information pertaining to a specified internal affairs investigation. You state you will release some of the requested information. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ 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 highly 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).

¹ We note the department did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

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, the submitted information reveals the requestor knows the identity of the individual involved as well as the nature of the information in the submitted documents. Therefore, withholding only the individual's identity or certain details of the 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 information must be withheld in its entirety under section 552.101 in conjunction with common-law privacy. However, we note the requestor's spouse is the individual whose privacy rights are implicated; thus, the requestor may have a right of access to such information if she is acting as the authorized representative of her spouse. *See* Gov't Code § 552.023(a)-(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). As we are not able to make this determination, we rule in the alternative. To the extent the requestor is not acting as the authorized representative of her spouse, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the requestor is acting as the authorized representative of her spouse, the department may not withhold the information pertaining to her spouse under section 552.101 in conjunction with common-law privacy. In that instance, as you raise no further exceptions to disclosure, the department must release the submitted information to the requestor.

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,

Nick Ybarra
Assistant Attorney General
Open Records Division

NY/mo

Mr. Chris Kadas - Page 3

Ref: ID# 966767

Enc. Submitted documents

c: Requestor
(w/o enclosures)