



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 30, 2011

Mr. B. Chase Griffith
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2011-17629

Dear Mr. Griffith:

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# 438841 (McKinney ORR# 10-4403).

The McKinney Police Department (the "department"), which you represent, received a request for a specified incident report during September 6, 2011, through September 19, 2011. 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. This section 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, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. 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, although you seek to withhold the submitted information in its entirety, you have not demonstrated, nor does it otherwise appear, this is a situation in which the submitted information must be withheld in its entirety on the basis of common-law privacy. However, upon review, we find that portions of the submitted information are highly intimate or embarrassing and not of legitimate public interest. Thus, the department must generally withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

We note, however, the requestor may be requesting the information on behalf of a parent of the child whose private information is at issue, and thus, may have a right of access under section 552.023 of the Government Code to the marked information. Section 552.023(a) gives a person or a person's authorized representative 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 disclosure by laws intended to protect that person's privacy interests. *See Gov't Code §552.023; Open Records Decision No. 481 at 4 (1987)* (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). Therefore, if the requestor is the authorized representative of the parent of the child whose information is at issue, then the department may not withhold the marked information under section 552.101. If the requestor is not the authorized representative of the parent of the child whose information is at issue, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. As no further exceptions to disclosure have been raised, 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Kirsten Brew
Assistant Attorney General
Open Records Division

KB/ag

Ref: ID# 438841

Enc. Submitted documents

c: Requestor
(w/o enclosures)