



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 21, 2012

Ms. Lisa D. Mares
Attorney for City of Kennedale
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2012-02607

Dear Ms. Mares:

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# 449656.

The City of Kennedale (the "city") received a request for information related to the requestor. You state the city will redact information as permitted by Open Records Decision No. 684 (2009)¹ and sections 552.130 and 552.147 of the Government Code.² You claim that the

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130 of the Government Code, e-mail addresses of members of the public under section 552.137 of the Government Code, direct deposit authorization forms under section 552.101 of the Government Code in conjunction with common-law privacy, W-2 and W-4 forms under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code, a Form I-9 and attachments under section 552.101 in conjunction with section 1324a of title 8 of the United States Code, and L-2 and L-3 declarations under section 552.101 in conjunction with section 1701.306 of the Occupations Code, without the necessity of requesting an attorney general decision.

²Section 552.130(c) authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). *See id.* § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general, and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting an attorney general decision under the Act. *See id.* § 552.147(b).

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 (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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 established. *Id.* at 681-82.

The types of information considered highly intimate or 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. In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

The requestor in this case knows the identity of the alleged victim. We believe that, in this instance, withholding only identifying information from the requestor would not preserve the victim’s common-law right to privacy. We conclude, therefore, that the city must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

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,

A handwritten signature in cursive script, appearing to read "Cindy Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 449656

Enc. Submitted documents

c: Requestor
(w/o enclosures)