



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 11, 2012

Ms. Charlotte L. Staples  
Counsel for the City of North Richland Hills  
Taylor Olson Adkins Sralla Elam L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, TX 76107-4654

OR2012-07013

Dear Ms. Staples:

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# 453367.

The City of North Richland Hills (the "city"), which you represent, received a request for a specified letter pertaining to a specified incident.<sup>1</sup> You claim that 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. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request for information. This ruling does not address the public availability of non-responsive information, and the city is not required to release non-responsive information in response to this request.

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<sup>1</sup>You inform us the requestor narrowed and clarified his request for information. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *City of Dallas v. Abbott*, 304 S.W.3d 380, 384 (Tex. 2010) (when governmental entity, acting in good faith, requests clarification or narrowing of unclear or over-broad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

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. This section encompasses the common-law right to privacy, which protects information if it (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 met. *Id.* at 681-82. Common-law privacy protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entirety of the information must be withheld to protect the individual’s privacy. In this instance, the request reveals the requestor knows the identity of the individual involved as well as the nature of the information at issue. Therefore, withholding only the individual’s identity or certain details of the incident from the requestor would not preserve the individual’s common-law right of privacy. Accordingly, the city must generally withhold the responsive information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

We note, however, the requestor may be requesting the information on behalf of the individual 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 city determines the requestor is the authorized representative of the individual whose information is at issue, then the city may not withhold the responsive information under section 552.101, and must release it to the requestor.<sup>2</sup> If the city determines the requestor is not the authorized representative of the individual whose information is at issue, the city must withhold the responsive information under section 552.101 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.

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<sup>2</sup>In this event, because the requestor has a right of access to information the city would be required to withhold from the general public, the city must request another decision if it receives another request for this same information from a different requestor. *See Gov’t Code §§ 552.301(a), .302.*

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](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 black ink that reads "Sean Opperman". The signature is written in a cursive style with a long horizontal flourish at the end.

Sean Opperman  
Assistant Attorney General  
Open Records Division

SO/som

Ref: ID# 453367

Enc. Submitted documents

c: Requestor  
(w/o enclosures)