



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 24, 2012

Ms. Rachel L. Lindsay  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2012-15197

Dear Ms. Lindsay:

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# 470179 (ORR# 10-5952).

The City of McKinney (the "city"), which you represent, received a request for information pertaining to the requestor's address during a specified time period. You claim the submitted information is excepted from disclosure under section 552.108 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."<sup>1</sup> Gov't Code § 552.101. This section 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). The type of information considered 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.

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 entire report must be withheld to protect the individual's privacy.

In this instance, the requestor knows the identity of the individual involved, as well as the nature of the incident investigated in report number 11-007437. Therefore, withholding only the individual's identity or certain details of this incident from the requestor would not preserve the subject individual's common-law right of privacy. Accordingly, report number 11-007437 and its related event report would ordinarily be withheld in its entirety under section 552.101 in conjunction with common-law privacy. We note, however, the requestor may be the authorized representative of the individual at issue in this report. Section 552.023 of the Government Code provides that a governmental body may not deny access to a person or a person's representative to whom the information relates on the grounds that the information is considered confidential under privacy principles. Gov't Code § 552.023(b). Thus, if the city determines the requestor does not have a right of access to this information pursuant to section 552.023, then the city must withhold report number 11-007437 and its related event report in their entirety under section 552.101 in conjunction with common-law privacy. However, if the city determines the requestor has a right of access pursuant to section 552.023, then the city may not withhold report number 11-007437 and its related event report based on the privacy interests of the individual at issue. Accordingly, we will address the city's argument under section 552.108 of the Government Code for report number 11-007437 and its related event report, as well as the remaining information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *Id.* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information relates to concluded cases that ended in results other than conviction or deferred adjudication. Based on your representation, we conclude section 552.108(a)(2) is applicable to the submitted information.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold the submitted information pursuant to section 552.108(a)(2) of the Government Code.

In summary, if the requestor is not acting as the authorized representative of the individual at issue in report number 11-007437, the city must withhold report number 11-007437 and its related event report under section 552.101 of the Government Code in conjunction with common-law privacy. If the city determines the requestor is acting as the authorized representative of the individual at issue, then except for basic information, the city may withhold report number 11-007437 and its related event report under section 552.108(a)(2) of the Government Code. In either event, except for basic information, the city may withhold the remaining information under section 552.108(a)(2) of the Government Code.

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](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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/ag

Ref: ID# 470179

Enc. Submitted documents

c: Requestor  
(w/o enclosures)