



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 26, 2012

Mr. B. Chase Griffith
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2012-15352

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# 467130 (ORR #10-5771).

The McKinney Police Department (the "department"), which you represent, received a request for (1) information pertaining to a specified incident involving a named individual and (2) all domestic violence calls at a specified address. You state the department has released most of the requested information. You claim that a portion of 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 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. *See 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. *See 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).

Additionally, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain circumstances, where the requestor knows the identity of the individual at issue and the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

In this instance, report number 10-002495 reflects the requestor knows the identity of the individual involved, as well as the nature of the incident at issue. Therefore, withholding only the individual's identity or certain details of that incident from the requestor would not preserve the subject individual's common-law right of privacy. Accordingly, the department must withhold report number 10-002495 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, it does not appear this is a situation in which report number 2012-015550 must be withheld in its entirety on the basis of common-law privacy. Upon review, however, we agree that portions of report number 2012-015550 are highly intimate or embarrassing and of no legitimate public concern. Accordingly, the department must withhold the information we have marked in report number 2012-015550 under section 552.101 in conjunction with common-law privacy.

We note some of the remaining information in report number 2012-015550 is excepted from disclosure under section 552.130 of the Government Code.¹ Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license, title, or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1)-(2). Therefore, the department must withhold the motor vehicle record information we have marked under section 552.130.

In summary, the department must withhold report number 10-002495 in its entirety and the information we have marked in report number 2012-015550 under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we have marked in report number 2012-015550 under section 552.130 of the Government Code. 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.

¹The 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.

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 that reads "Sean Opperman".

Sean Opperman
Assistant Attorney General
Open Records Division

SO/som

Ref: ID# 467130

Enc. Submitted documents

c: Requestor
(w/o enclosures)