



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 9, 2012

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

OR2012-16098

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# 467323 (McKinney ORR#10-5783).

The City of McKinney (the "city"), which you represent, received a request for all arrest and search warrant affidavits for the arrest of a named individual for a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have submitted information other than the requested search and arrest warrant affidavits. This information, which we have marked, is not responsive to the present request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the city need not release such information in response to this request.

You claim some of the responsive information is excepted from disclosure under section 552.107(2) of the Government Code because a judge has issued orders sealing the two responsive search warrant affidavits. Section 552.107(2) provides that information is excepted from disclosure if "a court by order has prohibited disclosure of the information." Gov't Code § 552.107(2). You have submitted copies of the two court orders signed by a visiting judge for the District Court of the 296th Judicial District, Collin County, Texas. Upon review of the court orders and the information at issue, we agree the responsive search

warrant affidavits were ordered sealed by court order. Accordingly, we conclude the city must withhold the two search warrant affidavits we have marked under section 552.107(2).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses the common-law right of 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 established. *Id.* at 681-82. 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. Information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, none of the remaining responsive information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold any of the remaining responsive information under section 552.101 on this basis.

We note portions of the remaining responsive information are subject to section 552.130 of the Government Code.¹ Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). We conclude the city must withhold the driver's license information we have marked under section 552.130.

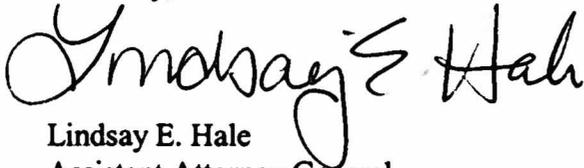
In summary, the city must withhold: (1) the two search warrant affidavits we have marked under section 552.107(2) of the Government Code; (2) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) the driver's license information we have marked under section 552.130 of the Government Code. The city must release the remaining responsive information.

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

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 467323

Enc. Submitted documents

c: Requestor
(w/o enclosures)
