



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 1, 2013

Ms. Diana Davis  
Records Clerk  
City of Harker Heights  
305 Miller's Crossing  
Harker Heights, Texas 76548

OR2013-03536

Dear Ms. Davis:

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# 480354.

The City of Harker Heights (the "city") received a request for all records pertaining to calls made to a specified address during a specified time period. You indicate the city has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request for information because it was created after the city received the request for information. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.

Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" See Gov't Code § 552.108(a)(2). A governmental body claiming subsection 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. See *id.* § 552.301(e)(1)(A). You state the submitted information is "exempt from

disclosure . . . because (2) the information relates only to the detection, investigation or prosecution of crime only in relation to *an* investigation which has did not result in a conviction or deferred adjudication.” We note, however, the submitted information contains multiple incident reports, and you have failed to identify which of the submitted reports pertains to an incident or arrest that concluded in a final result other than a conviction or deferred adjudication. *See id.* Further, section 552.108(a)(2) is only applicable if the information at issue is related to a concluded criminal investigation “that did not result in conviction or deferred adjudication[.]” Therefore, you have failed to demonstrate the information at issue consists of law enforcement records relating to an investigation that did not result in convictions or deferred adjudications. Accordingly, the city may not withhold any of the submitted information under section 552.108(a)(2) of the Government Code.

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. This section 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 satisfied. *Id.* at 681-82. The types 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. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure), 422 (1984), 343 (1982).

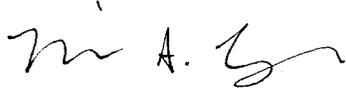
Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual’s privacy. In this instance, the requestor knows both the identify of the individual involved and the nature of the incident in one of the submitted reports. Therefore, withholding only the individual’s identity or certain details of the incident from the requestor would not preserve the subject’s individual common-law right to privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the city must withhold the report at issue, which we have marked, in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, you have not demonstrated, nor does it otherwise appear, the remaining information must be withheld in its entirety on the basis of common-law privacy. However, we find portions of the remaining information are highly intimate or embarrassing and not of legitimate public interest.

In this instance, the requestor is the subject of several of the reports. Thus, the requestor has a right of access to information pertaining to herself that would otherwise be confidential under common-law privacy. *See* Gov't Code 552.023(a) ("person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, we have marked the portions of the remaining information the city must withhold under section 552.101 of the Government Code in conjunction with common-law privacy. As no other exceptions to disclosure are raised for the remaining information, it must be released.<sup>1</sup>

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,



Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/ac

Ref: ID# 480354

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>We note the information being released in this instance includes information that may be confidential with respect to the general public. Therefore, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.