



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 28, 2013

Mr. Whitt L. Wyatt  
Assistant City Attorney  
City of Richardson  
P.O. Box 831078  
Richardson, Texas 75083-1078

OR2013-05048

Dear Mr. Wyatt:

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# 482606 (File No. 13-016).

The Richardson Police Department (the "department") received a request for the reports concerning incidents at two specified addresses during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions 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. *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. The type of information considered highly 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 also found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required disclosure under common-law privacy. 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 instances where it is demonstrated that 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, although you seek to withhold Exhibit C in its entirety, you have not demonstrated, nor does it otherwise appear, this is a situation in which any of the information at issue must be withheld in its entirety on the basis of common-law privacy. Therefore, Exhibit C may not be withheld in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, however, we find portions of Exhibits B and C are highly intimate or embarrassing and of no legitimate public concern. Accordingly, the department must withhold the information we have marked in Exhibits B and C under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>1</sup> The department has failed to demonstrate, however, how any of the remaining information in Exhibit C is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not withhold any of this information under section 552.101 in conjunction with common-law privacy.

Section 552.108(a)(2) of the Government Code 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[.]" Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You inform us most of the remaining information in Exhibit C relates to a crime that did not result in a conviction or deferred adjudication. However, you have labeled the report at issue as inactive and you do not inform us this case has concluded. Therefore, we determine the department has failed to demonstrate this information relates to a concluded investigation or prosecution that did not result in conviction or deferred adjudication. Accordingly, none of the remaining information in Exhibit C may be withheld under section 552.108(a)(2) of the Government Code.

We note a portion of the remaining information in Exhibit C may be subject to section 552.1175 of the Government Code.<sup>2</sup> This section provides, in part, the following:

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<sup>1</sup>As our ruling for this information is dispositive, we need not address your remaining argument against its disclosure.

<sup>2</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. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Information that relates to the home address, home telephone number, emergency contact information, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

*See id.* § 552.1175(b). Thus, to the extent the information we have marked in Exhibit C under section 552.1175 of the Government Code consists of a licensed peace officer's personal information and the peace officer elects to withhold access to the marked information in accordance with section 552.1175(b), the department must withhold this information under section 552.1175.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130(a)(1)-(2). Accordingly, the department must withhold the driver's license and motor vehicle record information you have marked, and the additional information we have marked, in Exhibit C under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked in Exhibits B and C under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information we have marked in Exhibit C under section 552.1175 of the Government Code consists of a licensed peace officer's personal information and the peace officer elects to withhold access to the marked information in accordance with section 552.1175(b) of the Government Code, the department must withhold this information under section 552.1175. The department must withhold the information marked in Exhibit C under section 552.130 of the Government Code. The department must release the remaining information in Exhibits B and C.

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,

A handwritten signature in black ink, appearing to read 'KLC', with a long horizontal flourish extending to the right.

Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/bhf

Ref: ID# 482606

Enc. Submitted documents

c: Requestor  
(w/o enclosures)