



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 22, 2013

Ms. Miriam Rodrigues  
Administrative Assistant  
City of Harker Heights Police Department  
402 Indian Trail  
Harker Heights, Texas 76548

OR2013-08537

Dear Ms. Rodrigues:

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# 488174.

The City of Harker Heights (the "city") received a request for information pertaining to a specified call for service number. 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 552.108(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 that 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 state the submitted information pertains to a criminal case that "has not resulted in

conviction or deferred adjudication.” We note section 552.108(a)(2) is applicable only if the information at issue is related to a concluded criminal case “that did not result in conviction or deferred adjudication.” *Id.* Thus, we find you have failed to demonstrate the applicability of section 552.108(a)(2) to the submitted information. Accordingly, the city may not withhold any of the submitted information under section 552.108(a)(2).

We note a portion of the submitted information is subject to section 552.101 of the Government Code.<sup>1</sup> Section 552.101 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. 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 No. 455 (1987) (information pertaining to prescription drugs, illnesses, operations, and physical disabilities protected from disclosure). Upon review, we find the information we have indicated in the audio portion of the submitted video recording is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold this information under section 552.101 in conjunction with common-law privacy. The city must release the remaining information.

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.

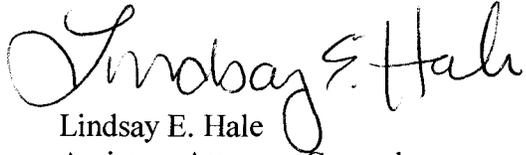
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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

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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. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 "Lindsay E. Hale". The signature is written in black ink and is positioned above the printed name.

Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/tch

Ref: ID# 488174

Enc. Submitted documents

c: Requestor  
(w/o enclosures)