



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 14, 2013

Ms. Rebecca Hendricks Brewer
Abernathy, Roeder, Boyd & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2013-14164

Dear Ms. Brewer:

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# 496326.

The City of Wylie (the "city"), which you represent, received a request for all information pertaining to volunteers at the city's animal shelter for a specified time period.¹ You state the city is making some information available to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.148 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 doctrine of common-law privacy, which protects information that (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

¹We note the city sought and received clarification of the information requested. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request).

test must be established. *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. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouses files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public concern. Accordingly, this information must be withheld under section 552.101 in conjunction with common-law privacy. However, no portion of the remaining information at issue may be withheld under section 552.101 in conjunction with common-law privacy.

We note some of the submitted information is subject to section 552.130 of the Government Code.² Section 552.130 provides in relevant part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;

...

(3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a)(1), (3). Upon review, we find the city must withhold the information we have marked under section 552.130 of the Government Code.³

²The 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).

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Section 552.148 of the Government Code provides the following:

- (a) In this section, “minor” means a person younger than 18 years of age.
- (b) The following information maintained by a municipality for purposes related to the participation by a minor in a recreational program or activity is excepted from the requirements of Section 552.021:
 - (1) the name, age, home address, home telephone number, or social security number of the minor;
 - (2) a photograph of the minor; and
 - (3) the name of the minor’s parent or legal guardian.

Id. § 552.148. You state the remaining information relates to the participation by minors in a city recreational program or activity. Upon review, we find the city must withhold the information we have marked pursuant to section 552.148 of the Government Code. However, we find none of the remaining information consists of personal information maintained by the city pertaining to a minor, and the city may not withhold it under section 552.148 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked under section 552.130 of the Government Code. The city must withhold the information we have marked under section 552.148 of the Government Code. The city must release the remaining information.⁴

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

⁴The information being released contains a partial social security number. Section 552.147 of the Government Code permits a governmental body to redact the social security number of a living individual without requesting a decision from this office. See Gov’t Code § 552.147(b).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Nottingham". The signature is fluid and cursive, with the first name "Sean" and last name "Nottingham" clearly distinguishable.

Sean Nottingham
Assistant Attorney General
Open Records Division

SN/tch

Ref: ID# 496326

Enc. Submitted documents

c: Requestor
(w/o enclosures)