



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 28, 2013

Ms. Rachel L. Lindsay
For the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2013-18748

Dear Ms. Lindsay:

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# 503587 (McKinney ORR #10-8110 and #10-8126).

The City of McKinney and the McKinney Police Department (collectively, the "city"), which you represent, received two requests from different requestors for information pertaining to report number 13-006538. The first requestor also seeks information pertaining to report number 13-006551. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the first requestor seeks report number 13-006551, which the second requestor does not request. Accordingly, report number 13-006551 is not responsive to the second request for information. Further, we note a portion of the information submitted in report number 13-006538 in response to the second request for information was not created until after the city received the first request for information. Accordingly, this information, which we have marked, is not responsive to the first request. This ruling does not address the public availability of any information that is not responsive to the respective requests and the city is not required to release such information to the respective requestors in response to the requests.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation. Id.* at 683.

In Open Records Decision No. 393, this office concluded generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). The first requestor in this instance knows the identity of the alleged victim in report number 13-006551. We believe in this instance, withholding only identifying information from the first requestor would not preserve the victim’s common-law right to privacy. We conclude, therefore, the city must withhold report number 13-006551 from the first requestor in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.¹ However, upon review, we find you have not demonstrated how the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report number 13-006538 pertains to an active criminal investigation. Based on your representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City*

¹As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.

of Houston, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to report number 13-006538.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information the city may withhold report number 13-006538 under section 552.108(a)(1) of the Government Code.²

We note some of the basic information in report number 13-006538 may be subject to section 552.1175 of the Government Code.³ Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Upon review, we find the basic information we have marked consists of the home address of an individual who may be among the types of individuals listed in section 552.1175(a), and the information is not held by the city in an employment capacity. Thus, if the information we marked relates to an individual to whom section 552.1175 applies and the individual elects to restrict access to the information in accordance with section 552.1175(b), then the city must withhold the marked information under section 552.1175. If the individual at issue is not an individual to whom section 552.1175 applies or if no election is made, the city may not withhold the marked information under section 552.1175 of the Government Code.

In summary, the city must withhold report number 13-006551 in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the city may withhold report number 13-006538 under section 552.108(a)(1) of the Government Code. In releasing basic information from report number 13-006538, the city must withhold the information we have marked under section 552.1175 of the Government Code, if the individual whose information is at issue is an individual to whom section 552.1175 applies, and the individual elects to restrict access to the information in accordance with section 552.1175(b).

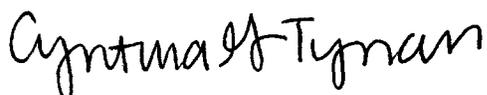
²As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.

³The 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.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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 503587

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)