



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 24, 2014

Ms. Lisa D. Mares
Counsel for City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2014-10790

Dear Ms. Mares:

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# 526723 (ORR# 10-10112).

The City of McKinney (the "city"), which you represent, received a request for a specified arrest record for a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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. 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 (1983), this office concluded, generally, only information which 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. ORD 393 at 2; *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). In this instance, you seek to withhold the entirety of the submitted information under section 552.101 in conjunction with common-law privacy. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy. Accordingly, the city may not withhold the entirety of the submitted information under section 552.101 of the Government Code on that basis. However, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the information we marked under section 552.101 in conjunction with common-law privacy. However, we find none of the remaining information is highly intimate or embarrassing information of no legitimate public interest, and it may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country.¹ Gov't Code § 552.130(a). Accordingly, the city must withhold the information we marked under section 552.130 of the Government Code.

We note the requestor identifies himself as an employee of the Child Protective Services Division of the Texas Department of Family and Protective Services. The interagency transfer doctrine provides that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinion No. GA-0055 (2003); Open Records Decision Nos. 680 at 7 (2003), 667 at 3-4 (2000). However, an interagency transfer of confidential information is prohibited where a confidentiality statute enumerates specific entities to which release of confidential information is authorized, and the requesting agency is not among the statute's enumerated entities. *See* Attorney General Opinion DM-353 at 4 n.6 (1995); Open Records Decision No. 661 at 3 (1999).

Common-law privacy is not a confidentiality statute that enumerates specific entities to which release of the confidential information is authorized. Furthermore, we note that release pursuant to the interagency transfer doctrine does not constitute a release of information to the public for the purposes of section 552.007 of the Act. *See, e.g.*, Attorney General Opinions H-917 at 1 (1976), H-242 at 4 (1974); *see also* Gov't Code §§ 552.007, .352. Thus, the city does not waive its interests in withholding this information

¹The 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).

by exercising its discretion under the interagency transfer doctrine. However, section 552.130 of the Government Code has its own access provision governing release of information. *See* Gov't Code § 552.130(b). Consequently, information subject to section 552.130 must be withheld even if the city chooses to release the submitted information pursuant to the interagency transfer doctrine.

In summary, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy and the information we marked under section 552.130 of the Government Code. The city must release the remaining information. However, with the exception of the information subject to section 552.130 of the Government Code, the city may exercise its discretion to release the submitted information to this requestor.

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 526723

Enc. Submitted documents

c: Requestor
(w/o enclosures)