



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 7, 2009

Mr. B. Chase Griffith
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2009-14154

Dear Mr. Griffith:

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# 357537.

The City of McKinney (the "city"), which you represent, received a request for three specific reports and a specified statement. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 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. Common-law privacy 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). The type of information considered intimate and 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. In addition, this office has found that some kinds of medical information or information including disabilities or specific illnesses to be excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 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 submitted information must be withheld in its entirety to protect the individual's privacy. In this instance, report number 08-046662 reveals that the requestor knows the identity of the individual involved as well as the nature of the submitted information. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the city must withhold report number 08-046662 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.¹ Although you seek to withhold the remaining reports in their entirety, you have not demonstrated, nor does it otherwise appear, that these are situations where the remaining information must be withheld in its entirety on the basis of common-law privacy. Accordingly, the remaining reports may not be withheld in their entirety under section 552.101 in conjunction with common-law privacy.

You claim the remaining information is excepted from disclosure under section 552.108(a)(2) of the Government Code, which excepts from disclosure information concerning an investigation that concluded in a result other than 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the remaining reports relate to concluded cases that did not result in a conviction or deferred adjudication. Based on your representations, we conclude section 552.108(a)(2) is generally applicable to the remaining reports.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information the city

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

may withhold the remaining reports pursuant to section 552.108(a)(2) of the Government Code. You claim the remaining information is excepted from disclosure under common-law privacy.

As noted above, the type of information considered intimate and embarrassing includes 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. *Indus. Found.*, 540 S.W.2d at 683. In addition, this office has found that some kinds of medical information or information including disabilities or specific illnesses to be excepted from required public disclosure under common-law privacy. *See* ORD 470, 455. Upon review, we conclude the information we have marked in the basic information in report number 08-044645 is intimate or embarrassing and of no legitimate public interest. Thus, this information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate how the remaining basic information is highly intimate or embarrassing. Therefore, no portion of the remaining information is confidential under common-law privacy, and it may not be withheld under section 552.101 of the Government Code on that basis.

We note report number 08-048760 pertains to an alleged sexual assault where the complainant is the victim. Generally, the identity of a sexual assault victim must be withheld from the public under section 552.101 of the Government Code in conjunction with common law privacy. *See* Open Records Decision Nos. 393 (1983), 339 (1982). However, the requestor, in this instance, is the alleged victim, and she has a special right of access to information that must otherwise be withheld from public disclosure to protect the victim's privacy.² *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles).

In summary, the city must withhold report number 08-046662 under section 552.101 in conjunction with common-law privacy. With the exception of basic information, the city may withhold the remaining information under section 552.108(a)(2). Before releasing basic, the city must withhold the information we have marked in report number 08-044645

² Therefore, should the city receive another request for this same information from a person who would not have a special right of access to it, the city should resubmit the same information and request another ruling from this office.

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under section 552.101 in conjunction with common-law privacy. The remaining information must be released.

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, 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,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 357537

Enc. Submitted documents

cc: Requestor
(w/o enclosures)