



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 3, 2013

Ms. Elizabeth Hanshaw Winn
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767-1748

OR2013-05281

Dear Ms. Winn:

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# 483185.

The Travis County Sheriff's Office (the "sheriff's office") received a request for all sexually oriented business permit applications submitted to the sheriff's office from a named individual or regarding a specified address. 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. You state the submitted information is subject to the decision in *N.W. Enterprises, Inc. v. City of Houston*, 352 F.3d 162 (5th Cir. 2003). The question in *N.W. Enterprises* was the constitutionality of an ordinance of the City of Houston that regulated sexually-oriented businesses and specified the personal information required of individuals applying for permits to work as managers or entertainers in such businesses. With regard to the required public disclosure under the Act of certain information provided by entertainers and managers in their permit applications, the district court in *N.W. Enterprises* concluded that:

"there is meaningful potential danger to individuals working in sexually oriented businesses if the information in their permit applications is disclosed

to the public. The Court concludes further that the potential for disclosure is likely to have a chilling effect on the applicants' protected speech. These dangerous and chilling effects are sufficiently severe that the information should be held confidential by the City of Houston."

N.W. Enters., Inc. v. City of Houston, 27 F.Supp.2d 754, 843 (S.D. Tex.1998). In upholding the confidentiality determination of the district court, the United States Court of Appeals for the Fifth Circuit stated that "[b]ecause the district court declared the information on entertainer and manager permit applications confidential under the [Act], the City of Houston cannot disclose it to the public." *N.W. Enters.*, 352 F.3d at 195. The appellate court also agreed the entertainers' and managers' home addresses and telephone numbers were confidential. *Id.* Thus, pursuant to *N.W. Enterprises*, information revealing the identity of an entertainer or manager of a sexually-oriented business, including the entertainer's or manager's home address and telephone number, is generally confidential. Portions of the submitted information reveal the types of information protected in *N.W. Enterprises*. Therefore, the identifying information we have marked must be withheld under section 552.101 in conjunction with the court's holding in *N.W. Enterprises*. However, *N.W. Enterprises* did not address the confidentiality of the remaining information, including the business name and business address. Further, we note an individual's post office box is not a home address. Therefore, the remaining information is not confidential under the decision in *N.W. Enterprises* and may not be withheld on that basis under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses 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 demonstrated. *See 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. You have failed to demonstrate any of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, no portion of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or

country is excepted from public release.¹ Gov't Code § 552.130(a)(1). Upon review, we find the sheriff's office must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold the identifying information we have marked under section 552.101 of the Government Code in conjunction with the court's holding in *N.W. Enterprises* and the information we have marked under section 552.130 of the Government Code. 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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/dls

Ref: ID# 483185

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).