



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 7, 2014

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

OR2014-05697

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# 518915 (McKinney ORR# 10-9351).

The City of McKinney (the "city"), which you represent, received a request for "any police reports related to" two named individuals and a specified address, including incidents that occurred on three specific days. The city released some information to the requestor. 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Generally, only highly intimate or embarrassing information implicating the privacy of an individual is withheld. However,

in certain situations where the requestor knows the identity of the individual involved, as well as the nature of certain incidents, an entire report must be withheld to protect the individual's privacy. Upon review, we find you have not demonstrated, and the submitted information does not reflect, a situation exists in which the submitted information must be withheld in its entirety to protect an individual's privacy interest. However, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must generally withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the city has failed to demonstrate how any of the remaining information is highly intimate and embarrassing or not of legitimate public concern. Therefore, the city may not withhold any of the remaining information under section 552.101 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.<sup>1</sup> Gov't Code § 552.130(a). Accordingly, the city must withhold the information we marked under section 552.130 of the Government Code.<sup>2</sup>

We note the requestor identifies herself 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.,

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<sup>1</sup>The 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).

<sup>2</sup>We note section 552.130 of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. See Gov't Code § 552.130(c). However, if a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See *id.* § 552.130(d), (e).

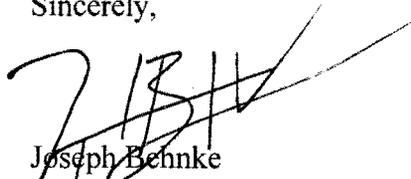
Attorney General Opinions H-917 at 1 (1976), H-242 at 4 (1974); *see also* Gov't Code §§ 552.007, .352. Thus, the city does not waive its interests in withholding this information by exercising its discretion under the interagency transfer doctrine. However, section 552.130 of the Government Code has 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 the 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](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,



Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 518915

Enc. Submitted documents

c: Requestor  
(w/o enclosures)