



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 8, 2014

Mr. John Ohnemiller
First Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702

OR2014-07841

Dear Mr. Ohnemiller:

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# 522310 (City ID # 13857).

The City of Midland (the "city") received two requests for information pertaining to a specified incident report. You state the city released some of the requested information. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestors have agreed to exclude driver's license numbers, license plate numbers, VIN numbers, and social security numbers from the scope of their requests. Accordingly, this type of information is not responsive to the present requests. This ruling does not address the public availability of non-responsive information, and the city need not release it in response to these 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information you have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the remaining responsive information may contain information subject to section 552.1175 of the Government Code. Section 552.1175(b) provides in part the following:

Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b).¹ The remaining responsive information may contain information pertaining to a peace officer not employed by the city. Accordingly, if the individual at issue is currently a licensed peace officer who elected to restrict access to her information in accordance with section 552.1175(b), the city must withhold the information we have marked under section 552.1175. If individual is not a licensed peace officer or did not elect to restrict access to her information, the city may not withhold the marked information.

In summary, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the individual at issue is currently a licensed peace officer who elected to restrict access to her information in accordance with section 552.1175(b) of the Government Code, the city must withhold the information we have marked under section 552.1175 of the Government Code. The city must release the remaining responsive 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).

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,

A handwritten signature in black ink that reads "Megan G. Holloway". The signature is written in a cursive style with a large, looping initial "M".

Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/akg

Ref: ID# 522310

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)