



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 10, 2014

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

OR2014-09907

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# 525472.

The McKinney Police Department (the "department"), which you represent, received a request for a specified incident report, including any supplemental reports. You state you will withhold information subject to section 552.130 of the Government Code.¹ You claim some of the submitted information is excepted from disclosure under section 552.1175 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1).

¹Section 552.130(c) 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). 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).

You state some of the submitted information relates to a peace officer who is employed by the department. You state the officer at issue has elected to restrict access to his information in accordance with section 552.1175(b). We note the department does not maintain the information in an employment context. Accordingly, the department must withhold the information we have marked under section 552.1175 of the Government Code. However, we find none of the remaining information you have marked consists of personal information for the purposes of section 552.1175, and it may not be withheld on that basis.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."² Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information if it (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). 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 we have marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold the information we have marked under section 552.1175 of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

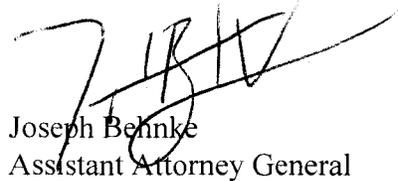
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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.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

²The 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).

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, appearing to read 'JBH', is written over the typed name 'Joseph Behnke'.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 525472

Enc. Submitted documents

c: Requestor
(w/o enclosures)