



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2014

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

OR2014-18790

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# 540308 (ORR# 10-11276).

The McKinney Police Department (the "department"), which you represent, received a request for the report, call sheet information, and copies of all audio and video recordings related to a specified case number and a specified call for service number. You claim the submitted information is excepted from disclosure under sections 552.101, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.130 of the Government Code provides 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 is excepted from public release. Gov't Code § 552.130(a). Upon review, we find the submitted video recordings contain information subject to section 552.130. You inform us the department does not have the technological capability to redact the motor vehicle record information from the recording. Accordingly, the department must withhold the submitted video recordings in their entirety under section 552.130 of the Government Code.¹

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this 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.” *See id.* § 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 we have marked and indicated satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate how any of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

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. 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). We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (Government Code section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). The department must withhold the information we have marked and indicated under section 552.1175 if the individual at issue elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code; however, the department may only withhold the marked cellular telephone number under section 552.1175 if the cellular telephone service was not paid for by a governmental body. If the individual at issue does not elect to restrict access to this information in accordance with section 552.1175(b) the department may not withhold this information under section 552.1175. Further, we find you have failed to demonstrate how any of the remaining information is subject to section 552.1175. Accordingly, the department may not withhold any of the remaining information on that basis.

In summary, the department must withhold the submitted video recordings in their entirety under section 552.130 of the Government Code. The department must withhold the information we have marked and indicated under section 552.101 of the Government Code

in conjunction with common-law privacy. The department must withhold the information we have marked and indicated under section 552.1175 if the individual at issue elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code; however, the department may only withhold the marked cellular telephone number under section 552.1175 if the cellular telephone service was not paid for by a governmental body. 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 540308

Enc. Submitted documents

c: Requestor
(w/o enclosures)