



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 16, 2014

Ms. Captoria Brown
Paralegal
Office of the City Attorney
City of Carrollton
1945 East Jackson Road
Carrollton, Texas 75006

OR2014-22749

Dear Ms. Brown:

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# 546957 (Carrollton ID# 3586).

The City of Carrollton (the "city") received a request for a specified offense report. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You generally assert section 552.108(a)(2) applies to the submitted information. However, you do not explain the information you marked pertains to a criminal case that concluded in a final result other than conviction or

¹Although you raise section 552.130 in your brief, we understand you to raise section 552.137 based on your markings.

deferred adjudication. Therefore, we find you have failed to demonstrate the applicability of section 552.108(a)(2) to the information you marked. Accordingly, the city may not withhold any of the information at issue under section 552.108(a)(2).

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. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. See *id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. Open Records Decision No. 393 at 2 (1983); see also *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App. –El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Upon review, we find the information we marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate the remaining information at issue is highly intimate or embarrassing and of no legitimate public interest. Thus, the remaining information at issue may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The e-mail address you have marked is not of a type excluded by subsection (c). Accordingly, the city must withhold the e-mail address you have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its release.

In summary, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the e-mail address you have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its release. The city must release the remaining information.

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,



Lauren Dahlstein
Assistant Attorney General
Open Records Division

LMD/som

Ref: ID# 546957

Enc. Submitted documents

c: Requestor
(w/o enclosures)