



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 2, 2015

Ms. Marie N. Rovira
Counsel for the Town of Addison
Messer, Rockefeller & Fort, PLLC
6351 Preston Road, Suite 350
Frisco, Texas 75034

OR2015-18383

Dear Ms. Rovira:

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# 577866.

The Town of Addison (the "town"), which you represent, received a request for four categories of information pertaining to discipline given to certain town employees, excluding any personally identifying information. You state you have released some of the requested information to the requestor. You state the town does not have some of the requested information.¹ You claim portions of the submitted information are not responsive to the instant request for information. You claim portions of the remaining submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, the town contends the information it has marked is not responsive to the instant request. Upon review, we find the information we have marked, which consists of personally identifying information, is not responsive to this request. This ruling does not address the

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). Likewise, a governmental body is not required to create or obtain information that is not in its possession, so long as no other individual or entity holds that information on behalf of the governmental body that receives the request. *See Gov't Code* § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989).

public availability of non-responsive information, and the town need not release non-responsive information in response to this request. As we find the remaining information is responsive to the present request, we will address the town's argument against disclosure of the responsive 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.

Upon review, we find the responsive information pertains to individuals who are not identified. Accordingly, we conclude this information does not implicate an individual's privacy interests. Thus, the town may not withhold any portion of the responsive information under section 552.101 of the Government Code in conjunction with common-law privacy. As the town does not raise another exception to disclosure, the town must release the responsive 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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 577866

Enc. Submitted documents

c: Requestor
(w/o enclosures)