



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 3, 2019

Ms. M. Shelby Percy
Counsel for the City of Red Oak
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 North Akard Street, Suite 1800
Dallas, Texas 75201

OR2019-18347

Dear Ms. Percy:

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# 773691 (CORO File Ref. No. 107528).

The City of Red Oak (the "city"), which you represent, received a request for records relating to eleven named individuals. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted 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 information made confidential by other statutes, such as article 44.2812 of the Code of Criminal Procedure, which addresses the confidentiality of records relating to fine-only misdemeanors. *See* Crim. Proc. Code art. 44.2812. Article 44.2812 provides, in pertinent part:

- (a) Except as provided by Subsection (b) and Article 45.0218(b), following the fifth anniversary of the date of a final conviction of, or of a dismissal after deferral of disposition for, a misdemeanor offense punishable by fine only, all records and files and information stored by electronic means or otherwise, from which a record or file could be generated, that are held or stored by or

for an appellate court and relate to the person who was convicted of, or who received a dismissal after deferral of disposition for, the offense are confidential and may not be disclosed to the public.

Id. art. 44.2812(a). We note article 44.2812(a) makes confidential records “held or stored by or for an appellate court.” *See id.* However, the submitted information is held by the city. Thus, we find article 44.2812(a) is not applicable to the submitted information. Accordingly, we conclude the submitted information is not confidential under article 44.2812(a) of the Code of Criminal Procedure, and the city may not withhold it under section 552.101 of the Government Code on that ground.

Section 552.101 of the Government Code also encompasses information made confidential by article 45.0218 of the Code of Criminal Procedure, which addresses the confidentiality of records relating to fine-only misdemeanors. *See id.* art. 45.0218. Article 45.0218 provides, in pertinent part:

(a) Except as provided by Subsections (b) and (c), following the fifth anniversary of the date of a final conviction of, or of a dismissal after deferral of disposition for, a misdemeanor offense punishable by fine only, all records and files and information stored by electronic means or otherwise, from which a record or file could be generated, that are held or stored by or for a municipal or justice court and relate to the person who was convicted of, or who received a dismissal after deferral of disposition for, the offense are confidential and may not be disclosed to the public.

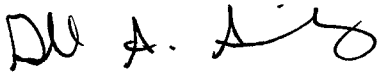
Id. art. 45.0218(a). We note article 45.0218(a) makes confidential records “held or stored by or for a municipal or justice court.” *See id.* However, the submitted information is held by the city. Thus, we find article 45.0218(a) is not applicable to the submitted information. Accordingly, we conclude the submitted information is not confidential under article 45.0218(a) of the Code of Criminal Procedure, and the city may not withhold it under section 552.101 of the Government Code on that ground. Consequently, the city must release the submitted information.¹

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.

¹We note the requestor has a right of access to some of the information being released in this instance. *See Gov't Code* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, if the city receives another request for the same information from a different requestor, the city must again seek a decision from this office.

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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/gw

Ref: ID# 773691

Enc. Submitted documents

c: Requestor
(w/o enclosures)