



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 5, 2020

Mr. L. Brian Narvaez  
Counsel for the City of McKinney  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2020-03356

Dear Mr. Narvaez:

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# 810289 (ORR# P013156-110619).

The McKinney Police Department (the "department"), which you represent, received a request for all police reports pertaining to two specified addresses during a stated time period, including information regarding named individuals and a named company. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.1175 of the Government Code.<sup>1</sup> We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the submitted information contains information subject to section 552.022(a)(17) of the Government Code, which provides:

[T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

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<sup>1</sup> We note, and you acknowledge, the department did not comply with the requirements of section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, because the exceptions you claim can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

...  
(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The information at issue, which we marked, consists of court-filed documents that are subject to section 552.022(a)(17). This information must be released unless it is made confidential under the Act or other law. *See id.* You seek to withhold some of the information subject to section 552.022(a)(17) under section 552.101 of the Government Code in conjunction with common-law privacy. We note common-law privacy is not applicable to information contained in public records. *See Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (law cannot recall information once in public domain). Therefore, no portion of the submitted court-filed documents may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, because section 552.1175 of the Government Code makes information confidential for purposes of section 552.022, we will address your argument under this exception for the court-filed documents subject to section 552.022(a)(17). Additionally, we will consider your arguments for the submitted information not subject to section 552.022(a)(17).

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." 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Further, this office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See, e.g.*, Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find some of the submitted information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the information we marked for release, the department must withhold the information you marked, and the additional information we marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you failed to demonstrate the information we marked for release is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not

withhold the information we marked for release under section 552.101 on the basis of common-law privacy.

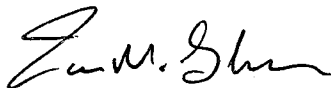
Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Upon review, we find you failed to demonstrate any of the information at issue is confidential under section 552.1175 of the Government Code. Therefore, the department may not withhold any of the remaining information under section 552.1175 of the Government Code.

In summary, with the exception of the information we marked for release, the department must withhold the information you marked and we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information.<sup>2</sup>

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/mo

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<sup>2</sup> We note the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. *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 department receives another request for this same information from a different requestor, the department must again seek a ruling from this office.

Ref: ID# 810289

Enc. Submitted documents

c: Requestor  
(w/o enclosures)