



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 12, 2020

Ms. Stephanie Berry
Assistant City Attorney
City of Denton
215 East McKinney Street
Denton, Texas 76201-4299

OR2020-15988

Dear Ms. Berry:

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# 834088 (ORR## R000357, R000384, R000438).

The City of Denton (the "city") received three requests for a specified case number. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "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 demonstrated. *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. Upon review, we find the submitted information contains information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entire report must be withheld to protect the

individual's privacy. In this instance, withholding only the individual's identity or certain details of the submitted information from the second and third requestors would not preserve the individual's common-law right of privacy. However, the first requestor is the individual whose privacy interest is at issue in the submitted information. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, the first requestor has a right of access to information pertaining to herself that would otherwise be confidential under common-law privacy and the city may not withhold the submitted information from the first requestor under section 552.101 on the basis of common-law privacy. We will therefore consider the city's argument under section 552.108 of the Government Code against disclosure of the submitted information with respect to the first requestor.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* 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 has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information pertains to a closed criminal investigation that did not result in conviction or deferred adjudication. Based on your representation, we agree section 552.108(a)(2) is applicable to the submitted information.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the city may withhold submitted information from the first requestor under section 552.108(a)(2) of the Government Code.

In summary, the city must withhold the submitted information from the second and third requestors in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the basic information, the city may withhold submitted information from the first requestor under section 552.108(a)(2) of the Government Code.

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,

Jesse Harvey
Assistant Attorney General
Open Records Division

JHI/rm

Ref: ID# 834088

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)