



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 21, 2022

Ms. Amanda Davis
Counsel for City of McKinney
Brown & Hofmeister, LLP
740 East Campbell Road, Suite 800
Richardson, Teas 75081

OR2022-29063

Dear Ms. Davis:

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# 973307 (ID No. P23742).

The City of McKinney (the "city"), which you represent, received a request for information pertaining to a specified incident involving the requestor. You claim some of 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 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 common-law privacy protects the identifying information of child victims of abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. We note the requestor has a right of access to information pertaining to her minor children, and this information may not be withheld from her under common-law privacy. *See* Gov't Code § 552.023(a) ("person or 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 interest"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).

Upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. You state the city does not possess the technological capability to redact information from audio files. However, because the city had the ability to copy the submitted audio recordings in order to submit them for our review, we believe the city has the capability to produce a copy of only the non-confidential portions of the audio recordings. Accordingly, the city may not withhold the audio recordings in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Therefore, with the exception of the information we have marked for release, the city must withhold the information it marked, and the additional information we have indicated, under section 552.101 of the Government Code in conjunction with common-law privacy. However, the city has failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate concern to the public. Therefore, the city may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy. The city must release the remaining information to this requestor.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.

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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/jxd

¹ We note the requestor has a special right of access to the information being released under section 552.023 of the Government Code and section 261.201(k) of the Family Code. See Gov't Code § 552.023; ORD 481 at 4; see also Fam. Code § 261.201(k). If the city receives another request for this same information from a different requestor, it must again seek a ruling from this office. See Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

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Enc. Submitted documents

c: Requestor
(w/o enclosures)