



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 18, 2017

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2017-08129

Dear Mr. Kopp:

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# 656550 (COSA File Nos. W157502, W157508).

The City of San Antonio (the "city") received one request for information pertaining to a specified incident (the "first requestor") and another request from a different requestor for information pertaining to two named individuals (the "second requestor"). The city claims the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in the *Industrial Foundation* decision. *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). The Third

Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

The city argues the submitted information must be withheld in its entirety on the basis of common-law privacy. However, the city has not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the submitted information must be withheld on the basis of common-law privacy. Thus, the city may not withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Nevertheless, the city must withhold the dates of birth of public citizens in the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. We also find some of the remaining information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must generally withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we conclude the remaining information is not confidential under common-law privacy, and the city may not withhold it under section 552.101 on that ground.

We note the first requestor is the spouse of one of the individuals whose information we have marked under common-law privacy. Therefore, if the first requestor is an authorized representative of her spouse, then this requestor has a right of access to her spouse's private information and the city must release this information to her pursuant to section 552.023 of the Government Code. *See Gov't Code* § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). If the first requestor is not an authorized representative of her spouse, then the city may not release this information to her pursuant to section 552.023 but, instead, must withhold it under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.¹ *See Gov't Code* § 552.130. The city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

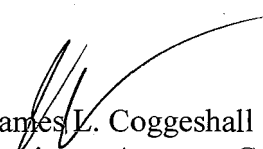
¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See Open Records Decision* Nos. 481 at 2 (1987), 480 at 5 (1987).

To conclude, the city must withhold the dates of birth of public citizens and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; however, if the first requestor is an authorized representative of her spouse, then this requestor has a right of access to her spouse's private information pursuant to section 552.023 of the Government Code. The city must also withhold the information we have marked under section 552.130 of the Government Code. The city must release the remaining 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 656550

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)