



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 26, 2017

Mr. Oscar G. Gabaldón, Jr.
Assistant City Attorney
Office of the City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2017-11555

Dear Mr. Gabaldón:

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# 659280 (ORR# 17-1026-8328).

The El Paso Police Department (the "department") received a request for case number 07-070060. We understand the department will redact public citizens' dates of birth pursuant to Open Records Letter No. 2016-10113 (2016).¹ The department claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception the department claims 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.

¹Open Records Letter No. 2016-10113 authorizes the department to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

²Although you also raise section 552.101 of the Government Code in conjunction with constitutional privacy for the submitted information, you provide no argument explaining how this doctrine applies to the information at issue. Therefore, we assume you no longer assert this doctrine. *See* Gov't Code §§ 552.301, .302.

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. Upon review, we find some of the submitted information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the department has not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy. The department 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 659280

Enc. Submitted documents

c: Requestor
(w/o enclosures)