



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 14, 2017

Mr. Stephen D. Gates  
Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR2017-13102

Dear Mr. Gates:

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# 661832 (ID# M020436-032817).

The City of Midland (the "city") received a request for information pertaining to a specified incident. You state you have released some information. You inform us you will redact certain information pursuant to sections 552.130(c), 552.136(c), and 552.147(b) of the Government Code, as well as Open Records Letter No. 2015-26022 (2015).<sup>1</sup> 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

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<sup>1</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.136(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the information described in section 552.136(b). *Id.* § 552.136(c); *see also id.* § 552.136(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.136(c) to attorney general and governmental body withholding information pursuant to section 552.136(c) must provide certain notice to requestor). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *Id.* § 552.147(b). Open Records Letter No. 2015-26022 authorizes the city 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.

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 or 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). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information you indicated is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold any of the remaining information under section 552.101 of the Government Code on that basis. The city must release the remaining information.

Finally, you ask this office to issue a previous determination permitting the city to withhold Screening Forms for Suicide and Mental Impairments under section 552.101 of the Government Code in conjunction with common-law privacy without requesting an opinion from this office. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Having considered your request, we decline to issue such a previous determination at this time. Accordingly, 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](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,



Matthew Taylor  
Assistant Attorney General  
Open Records Division

MHT/bw

Ref: ID# 661832

Enc. Submitted documents

c: Requestor  
(w/o enclosures)