



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 15, 2017

Mr. Stephen D. Gates
First Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79701

OR2017-18598

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# 671722 (Midland ID# M020989-060717).

The City of Midland (the "city") received a request for information pertaining to a specified incident. You state the city has released some of the requested information. 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 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). 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.). We note, however, the requestor has a right of access to her own date of birth and it may not be withheld from her under section 552.101 on the basis of common-law privacy. *See* Gov't Code § 552.023(a)-(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); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

Upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, we conclude the city must withhold the information we marked, as well as all the dates of birth belonging to public citizens other than the requestor, under section 552.101 in conjunction with common-law privacy. We find you have failed to demonstrate the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold the remaining information at issue under section 552.101 on that basis.

We note portions of the remaining information are subject to section 552.130 of the Government Code.¹ Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). We conclude the city must withhold the information we marked under section 552.130.

In summary, the city must withhold the information we marked, as well as all the dates of birth belonging to public citizens other than the requestor, under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we marked under section 552.130 of the Government Code. The city must release the remaining information.²

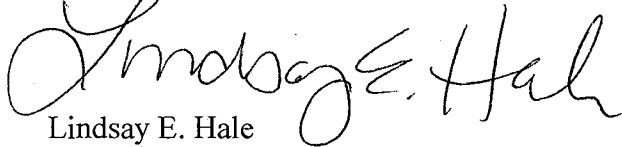
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481, 480 (1987), 470 (1987).

²We note the information being released contains a social security number. 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. Gov't Code § 552.147(b). Additionally, we note the requestor has a right of access beyond that of the general public to some of the information being released. *See id.* § 552.023(a); ORD 481 at 4.

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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive style with a large initial "L".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tdw

Ref: ID# 671722

Enc. Submitted documents

c: Requestor
(w/o enclosures)