



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 16, 2017

Mr. Nathan T. Brown  
Assistant City Attorney  
City of New Braunfels  
550 Landa Street  
New Braunfels, Texas 78130

OR2017-18643

Dear Mr. Brown:

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# 671434 (PD Control No. 1678-17).

The New Braunfels Police Department (the "department") received a request for information pertaining to a named individual, including a specified incident. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have redacted some information in the submitted documents, including a date of birth. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *Id.* § 552.301(a), (e)(1)(D). The department does not assert, nor does our review of our records indicate, the department has been authorized to withhold the redacted information without seeking a ruling from this office. *Id.* § 552.301(a); Open Records Decision No. 673 (2000). As such, this information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we are unable to discern the nature of some of the redacted information. Therefore, the department has failed to comply with section 552.301 of the Government

Code as to this information, and this information is presumed public under section 552.302. Accordingly, the department must release the information we have marked. If you believe this information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code. However, we will address the remaining redacted information, as we are able to discern the nature of this information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information at issue pertains to closed criminal investigations that did not result in convictions or deferred adjudications. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to the information at issue.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, which must be released, the department may withhold Exhibits C and E under section 552.108(a)(2) of the Government Code.<sup>1</sup>

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,

---

<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

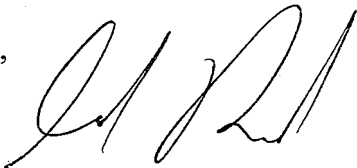
2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Accordingly, the department must withhold the date of birth you have redacted and the information we have indicated in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of the basic information, which must be released, the department may withhold Exhibits C and E under section 552.108(a)(2) of the Government Code. The department must withhold the date of birth you have redacted and the information we have indicated in the remaining information under section 552.101 of the Government Code 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](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,



Sidney M. Pounds  
Assistant Attorney General  
Open Records Division

SMP/sdk

Ref: ID# 671434

Enc. Submitted documents

c: Requestor  
(w/o enclosures)