



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 18, 2017

Mr. Darrell G-M Noga
Counsel for the City of Coppell
Cantey Hanger, LLP
1999 Bryan Street, Suite 3300
Dallas, Texas 75201-6822

OR2017-18911

Dear Mr. Noga:

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# 671796 (COC ORR Nos. W002671, W002673, W002675).

The City of Coppell (the "city"), which you represent, received three requests from three different requestors for information pertaining to a specified incident. You state some information has been or will be released to the requestors. You claim 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. 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.). Further, in Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. ORD 393 at 2; see Open Records Decision No. 339 (1982); see also *Morales v. Ellen*, 840 S.W.2d at 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information).

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. In this instance, the requestor in ORR No. W002673 knows both the identity of the individual involved and the nature of the incident. Therefore, withholding only the individual's identity or certain details of the incident from this requestor would not preserve the subject individual's common-law right to privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy from the requestor in ORR No. W002673. Although you seek to withhold the entirety of the submitted information under section 552.101 in conjunction with common-law privacy from the remaining requestors, we note the city has not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on that basis from these requestors. Accordingly, the city may not withhold the entirety of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy from the remaining requestors. Nevertheless, upon review, we find portions of the submitted information are highly intimate or embarrassing and not of legitimate public concern. We note this information contains private information and the dates of birth of individuals who will be de-identified and whose privacy interests will, thus, be protected. Accordingly, the city must withhold the information we have marked and the dates of birth of any remaining identifiable public citizens under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information is not confidential under common-law privacy and the city may not withhold it under section 552.101 on that ground.

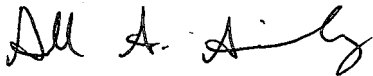
Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the

information must concern the “most intimate aspects of human affairs.” *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find you have failed to demonstrate any portion of the remaining information falls within the zones of privacy or implicates an individual’s privacy interests for purposes of constitutional privacy. Therefore, the city may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of constitutional privacy. Accordingly, 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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/tdw

Ref: ID# 671796

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)