



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 7, 2017

Ms. Delietrice Henry
Open Records Assistant
City of Plano
P. O. Box 860358
Plano, Texas 75086-0358

OR2017-20482

Dear Ms. Henry:

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# 674480 (ORR# MARC061917).

The Plano Police Department (the "department") received a request for information pertaining to a named individual and the requestor during a specified time period. 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 public 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 constitutional privacy. Constitutional privacy 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)). After review of the submitted information, we find you failed to demonstrate any portion of the information at issue falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the department may not withhold any of the submitted information under section 552.101 on the basis of constitutional privacy.

Section 552.101 of the Government Code also 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). The 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.).

Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must generally withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note the submitted information reveals the requestor is the wife of the named individual whose privacy is implicated, and may be acting as the named individual's authorized representative. Accordingly, the requestor may have a right of access to her spouse's normally private information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(b) (government body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987). Therefore, if the requestor is acting as the authorized representative of her spouse, she has a right of access to his information pursuant to section 552.023(b), and it may not be withheld from her under section 552.101 of the Government Code in conjunction with common-law privacy. In that case, the information we marked must be released.¹ If, however, the requestor is not acting as the authorized representative of her spouse, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. In either instance, we find none of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the department may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law

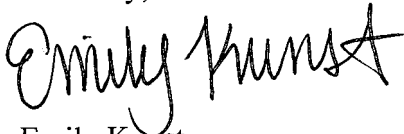
¹We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(b); ORD 481 at 4. Thus, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

privacy. As you raise no other exceptions to disclosure, the remaining information must be released.

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,

A handwritten signature in black ink that reads "Emily Kunst". The signature is written in a cursive style with a large, stylized initial "E".

Emily Kunst
Attorney
Open Records Division

EK/eb

Ref: ID# 674480

Enc. Submitted documents

c: Requestor
(w/o enclosures)