



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 22, 2017

Ms. Ramah Burns  
City Secretary  
City of Reno  
195 West Reno Road  
Azle, Texas 76020

OR2017-21803

Dear Ms. Burns:

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# 676763.

The City of Reno (the "city") received a request for information pertaining to two named individuals.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under section 552.117 of the Government Code. You also state that release of this information may implicate the privacy interests of the named individuals. Accordingly, you have notified the named individuals of the request and of the individuals' opportunity to submit comments to this office as to why their information should not be released to the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the named individuals. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have redacted some information in the submitted documents. We understand you have redacted some motor vehicle record information pursuant to

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<sup>1</sup>You state the requestor modified his request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request). *See also* *City of Dallas v. Abbott*, 304 S. W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

section 552.130(c) of the Government Code.<sup>2</sup> However, you have also redacted dates of birth from the information at issue. You do not assert, nor does our review of our records indicate, you have been granted a previous determination to withhold such information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). 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 able to discern the nature of the information that has been redacted; thus, being deprived of that information does not inhibit our ability to make a ruling. Nevertheless, be advised that a failure to provide this office with the requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted information be released. *See Gov't Code* §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of “specific information requested”), .302. Thus, in the future, the city should refrain from redacting, without authorization, any information it submits to this office in seeking an open records ruling.

Next, we note some of the submitted information is subject to section 1.012 of the Election Code, which provides as follows:

(a) Subject to Subsection (b), an election record that is public information shall be made available to the public during the regular business hours of the record's custodian.

(c) Except as otherwise provided by this code or [the Act], all election records are public information.

(d) In this code, “election record” includes:

(1) anything distributed or received by government under this code;

(3) a certificate, application, notice, report, or other document or paper issued or received by government under this code.

Elec. Code § 1.012(a), (c), (d)(1), (3). An application for a place on an election ballot “is public information immediately on its filing.” *Id.* § 141.035. Pursuant to chapter 252 of the Election Code, a candidate is required to appoint a campaign treasurer and file a record of the appointment with the clerk or secretary of the political subdivision's governing body. *See id.* §§ 252.001, .005. Campaign contribution and finance reports must also be filed under the Election Code. *See id.* §§ 254.031, .061, .091. Thus, the submitted applications for a

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<sup>2</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. *See 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).

place on an election ballot, campaign treasurer appointments, and campaign contribution and finance reports constitute “election records” and are public information subject to disclosure, except as provided by the Act. *See id.* § 1.012(a), (c). Accordingly, we will address your arguments against disclosure.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>3</sup> 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 *Industrial Foundation*. *Id.* at 683. This office has found a compilation of an individual’s criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual’s privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one’s criminal history). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. We note information that refers to an individual solely as a victim, witness, or involved person does not implicate the privacy interest of the individual and may not be withheld under section 552.101 on that basis.

The present request, in part, seeks unspecified law enforcement records pertaining to the named individuals. This request requires the city to compile the named individuals’ criminal histories and implicates the named individuals’ rights to privacy. Therefore, to the extent the city maintains law enforcement records listing the named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note you have submitted law enforcement records that do not list any of the named individuals as suspects, arrestees, or criminal defendants. This information does not implicate the privacy interest of any of the named individuals and may not be withheld as a compilation of the individuals’ criminal histories under section 552.101 of the Government Code in conjunction with common-law privacy.

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Indus. Found.*, 540 S.W.2d at 683. 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 some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the dates of birth you redacted and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

The named individuals raise sections 552.108(a)(2) and (b)(2) of the Government Code. Section 552.108 provides, in relevant part, the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2), (b)(2). However, section 552.108 is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions that are intended to protect the interests of third parties. Open Records Decision Nos. 522 at 4 (1989) (discretionary exceptions in general), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). The city does not raise section 552.108 for any of the remaining information. Therefore, the city may not withhold any of the remaining information under section 552.108.

Section 552.117 of the Government Code excepts from disclosure the home address and telephone number, social security number, emergency contact information, and family member information of specified categories of individuals. *See* Gov't Code § 552.117. However, section 552.117 applies only to records that a governmental body holds in an

employment capacity. As previously noted, some of the information at issue constitutes election records the city maintains in accordance with the Election Code, not employment records. Further, the remaining information at issue is held by the city's police department in a law enforcement context. Thus, the city may not withhold any portion of the remaining information under section 552.117(a)(1) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. Accordingly, the city must withhold the motor vehicle record information you redacted and we have marked under section 552.130 of the Government Code.

In summary, to the extent the city maintains law enforcement records listing the named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the dates of birth you redacted and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information you redacted and we have marked under section 552.130 of the Government Code. 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](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/gw

Ref: ID# 676763

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: 2 Third Parties  
(w/o enclosures)