



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 2, 2017

Mr. Matthew Murray  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, Third Floor  
Fort Worth, Texas 76102

OR2017-22464

Dear Mr. Murray:

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# 678256 (PIR No. W063514).

The City of Fort Worth (the "city") received a request for all audio and video recordings associated with a specified incident. 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.

Initially, you indicate some of the submitted information is not responsive to the request for information because it does not consist of the audio or video recordings at issue. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release this information in response to this request.

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 of the Government Code 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, 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.)

In Open Records Decision No. 393 (1983), this office concluded generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 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); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). Further, where the requestor knows the identity of the victim, the entire report must be withheld to protect the victim's privacy. In this instance, the city seeks to withhold the entirety of the responsive information under section 552.101 in conjunction with common-law privacy. However, the city has not demonstrated, and we are not able to determine, the requestor knows the identity of the victim. Accordingly, the city may not withhold the entirety of the information at issue under section 552.101 of the Government Code on that basis. Upon review, we find the identifying information of the victim of sexual assault, which we have indicated, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold all dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the city has not demonstrated any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, the city may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

We note some of the remaining information is subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 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* Gov't Code § 552.130. Accordingly, the city must withhold the motor vehicle record information we have indicated under section 552.130 of the Government Code.

---

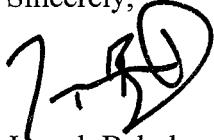
<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have indicated 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,

A handwritten signature in black ink, appearing to read 'J. Behnke', with a large, stylized flourish at the end.

Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/gw

Ref: ID# 678256

Enc. Submitted documents

c: Requestor  
(w/o enclosures)