



KEN PAXTON

ATTORNEY GENERAL OF TEXAS

October 11, 2017

Mr. Jose Hernandez
Records Supervisor
Edinburg Police Department
1702 South Closner Boulevard
Edinburg, Texas 78539

OR2017-23142

Dear Mr. Hernandez:

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# 679422 (Ref. No. 103916).

The Edinburg Police Department (the "department") received a request for a specified report. 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 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. The 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 some of the information at issue is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the department must generally withhold the information you have marked, as well as the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

However, we note the requestor may be the spouse of one of the individuals whose information is at issue. Section 552.023(a) of the Government Code states that a person or a person's authorized representative has a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest. *See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).* Accordingly, if the requestor is the spouse of the individual at issue and she is acting as her spouse's authorized representative, then the requestor has a right of access to her spouse's date of birth. In this instance, the department may not withhold her spouse's date of birth under section 552.101 in conjunction with common-law privacy. If the requestor is not the spouse of the individual at issue and is not acting as her spouse's authorized representative, then the department must withhold his date of birth under section 552.101 in conjunction with common-law privacy. In either instance, the department must withhold the remaining information you have marked and we have marked 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, 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,



Britni Ramirez
Assistant Attorney General
Open Records Division

BR/gw

Ref: ID# 679422

Enc. Submitted documents

c: Requestor
(w/o enclosures)



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 11, 2017

Ms. Dawn Bracket
Counsel for the City of Bells
Messer, Rockefeller & Fort, P.L.L.C.
6371 Preston Road, Suite 200
Frisco, Texas 75034

OR2017-23143

Dear Ms. Bracket:

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# 679617 (ORR# Bells-01).

The City of Bells (the "city"), which you represent, received a request for information related to all cases initiated at the city since a specified date, including fines, fees, court costs, restitution, and payments to victims, as well as demographics of defendants, case characteristics, judicial demographics, and geographic or jurisdictional indicators. The city claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception the city claims and reviewed the submitted information.

Initially, the Act is applicable to information "written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). However, the Act's definition of "governmental body" does not include the judiciary. *Id.* § 552.003(1)(B). Information "written, produced, collected, assembled, or maintained by or for the judiciary" is not subject to the Act but, instead, is "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131

¹We note the city did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, because the exception the city claims can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.


(1976) (applying statutory predecessor to judiciary exclusion under Government Code section 552.003(1)(B) prior to enactment of Government Code section 552.0035). Therefore, the Act neither authorizes information held by the judiciary to be withheld, nor does it require such information be disclosed. *See* Open Records Decision No. 25 (1974). The instant request was addressed and submitted to the city secretary but the city indicates the submitted information is maintained by the city's municipal court. Accordingly, we conclude the submitted information is not subject to the Act and the city is not required to release the submitted information in response to this request for information.

Next, we note although the instant request for information was submitted to the city, the city has not submitted information maintained by a department of the city that is subject to the Act. To the extent a department of the city that is subject to the Act maintained any responsive information on the date the city received the request, we assume the city has released it. If the city has not released any such information, it must do so at this time.² *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tdw

²Section 58.008(b) of the Family Code is applicable to records of delinquent conduct or conduct indicating a need for supervision involving a juvenile offender. *See* Act of May 28, 2017, 85th Leg., R.S., S.B. 1304, § 22; *see also* Fam Code §§ 51.02(2) (defining "child"), .02(16) (defining "traffic offense"), .03(a)(1) (delinquent conduct does not include traffic offense), .03(b)(1) (conduct indicating need for supervision does not include traffic offense).

Ref: ID# 679617

Enc. Submitted documents

c: Requestor
(w/o enclosures)