



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 8, 2017

Mr. Nathan Brown
Assistant City Attorney
Office of the City Attorney
City of New Braunfels
550 Landa Street
New Braunfels, Texas 78130

OR2017-25584

Dear Mr. Brown:

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# 689191 (PD Control No. 3422-17).

The New Braunfels Police Department (the "department") received a request for a specified incident report. The department claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ We have considered the claimed exceptions 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 and embarrassing by the

¹Although the department does not raise section 552.130 of the Government Code in its brief, we understand it to raise that exception based on its markings.

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 Third Court of Appeals has also 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.). 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.

The department argues the submitted information must be withheld in its entirety on the basis of common-law privacy. However, the department has not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the submitted information must be withheld on that ground. Thus, the department may not withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Nevertheless, we find the submitted dates of birth of public citizens and some of the remaining information at issue, which we have marked, satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the submitted dates of birth of public citizens and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we conclude the remaining information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.

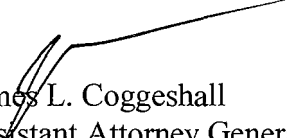
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. The department must withhold the driver's license numbers it has marked under section 552.130 of the Government Code.

In summary, the department must withhold the submitted dates of birth of public citizens and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the driver's license numbers it has marked under section 552.130 of the Government Code. 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/som

Ref: ID# 689191

Enc. Submitted documents

c: Requestor
(w/o enclosures)