



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 13, 2017

Mr. Stephen D. Gates
First Assistant City Attorney
City Attorney's Office
City of Midland
P.O. Box 1152
Midland, Texas 79701

OR2017-28268

Dear Mr. Gates:

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# 687644 (M021942-093017).

The City of Midland (the "city") received a request for information pertaining to a specified incident and a named individual. 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.

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. Common-law privacy protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. In this instance, the submitted information pertains to alleged sexual assaults. Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See*

Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body must generally withhold all of the information pertaining to a sexual assault when the requestor knows the identity of the alleged sexual assault victim. *See* ORD 393.

In this instance, the requestor may represent one of the victims whose privacy interest is at issue. Under section 552.023 of the Government Code, “a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov’t Code § 552.023(a); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself or person for whom she is authorized representative). Accordingly, we must rule conditionally. If the requestor is not this individual’s authorized representative, the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is the victim’s authorized representative, the submitted information may not be withheld in its entirety from the requestor on the basis of section 552.101 in conjunction with common-law privacy. Accordingly, in that instance, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, but may not withhold the remaining information on those grounds. In that instance, we will consider whether the remaining information is otherwise excepted under the Act.

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.¹ *See* Gov’t Code § 552.130(a). We find portions of the remaining information consist of motor vehicle record information. Accordingly, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The e-mail addresses at issue are not a type specifically excluded by section 552.137(c) of the Government Code. Accordingly, the city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure.

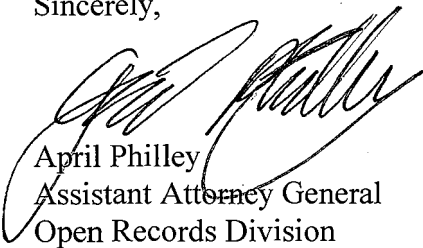
¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, if the requestor is not the authorized representative of the named individual, the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is the authorized representative of the named individual, the city must withhold: (1) the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the motor vehicle record information we marked under section 552.130 of the Government Code; and (3) the e-mail addresses we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its disclosure. In that case, the city must release the remaining information.²

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,



April Philley
Assistant Attorney General
Open Records Division

AP/som

Ref: ID# 687644

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a right of access to some of the information being released in this instance. See Gov't Code § 552.023(a); ORD 481 at 4 (1987). Thus, if the city receives another request for the same information from a different requestor, the city must again seek a decision from this office.