



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 24, 2018

Mr. James Kopp
Assistant City Attorney
Office of the City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2018-01561

Dear Mr. Kopp:

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# 692752 (COSA File No. W190529).

The City of San Antonio (the "city") received a request for a specified incident report. 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, 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, this office 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. *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 that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the information must be withheld in its entirety to protect the individual's privacy.

In this instance, the city seeks to withhold the entirety of the submitted information under section 552.101 in conjunction with common-law privacy. However, the city did not demonstrate, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy. Accordingly, the city may not withhold the entirety of the submitted information under section 552.101 of the Government Code on that basis. However, upon review, we find some of the submitted information, which we marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. In this instance, the submitted information reveals the requestor is one of the individuals whose privacy interests are at issue. Thus, the requestor has a right of access to information concerning himself. We note the requestor is also the spouse of an individual whose privacy is at issue. Thus, the requestor may be the authorized representative of his spouse, and may have a right of access to information pertaining to his spouse that would otherwise be confidential under common-law privacy. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, if the requestor is acting as the authorized representative of his spouse, then the city may not withhold any of the marked information concerning his spouse from this requestor under section 552.101 on the basis of common-law privacy. If the requestor is not acting as the authorized representative of his spouse, the city must withhold the information we marked under section 552.101 in conjunction with common-law privacy.

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 a personal identification document issued by an agency of this state or another state or country is excepted from public release.¹ Gov't Code § 552.130(a). Accordingly, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, if the requestor is not acting as the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law

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, 480 (1987), 470 (1987).

privacy; however may not withhold the information pertaining to the requestor's spouse if the requestor is acting as the authorized representative of his spouse. The city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. 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,



Patrick P. Mehaffy
Attorney
Open Records Division

PPM/som

Ref: ID# 692752

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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