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ATTORNEY GENERAL OF TEXAS

January 3, 2019

Mr. Matthew L. Butler
Counsel for City of Hurst
Boyle & Lowry, L.L.P.
4201 Wingren Drive, Suite 108
Irving, Texas 75062-2763

OR2019-00162

Dear Mr. Butler:

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# 747526 (Request Nos. 2433 and 2435).

The City of Hurst (the "city"), which you represent, received two requests from the same requestor for two specified police reports. 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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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.).

Upon review, we find the submitted reports contain information that satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. 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 entire report must be withheld to protect the individual's privacy. In this instance, the submitted information reveals the requestor knows the identity of the individual involved as well as the nature of the information in the submitted documents. Therefore, withholding only the individual's identity or certain details of the incident from this requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the city must generally withhold the submitted information in its entirety under section 552.101 in conjunction with common-law privacy.

However, we note the requestor may be the spouse of the individual whose private information is at issue and, to the extent the requestor is acting as her spouse's authorized representative, she has a special right of access under section 552.023 of the Government Code to information pertaining to her spouse that would otherwise be withheld to protect his privacy. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). In that instance, the city may not withhold the submitted information in its entirety on the basis of common-law privacy. We note the submitted information includes the date of birth of an individual who is not the requestor or her spouse. Accordingly, the city must withhold the date of birth we have marked that pertains to an individual other than the requestor or her spouse. We find you have failed to demonstrate the remaining information that pertains to individuals other than the requestor or her spouse is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold the remaining information under section 552.101 on this basis.

To the extent the submitted information is not protected in its entirety under section 552.101 in conjunction with common-law privacy, we note portions of the remaining information are subject to section 552.130 of the Government Code.¹ Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). We note, however, because section 552.130 is designed to protect the privacy of individuals, the requestor has a right of access to the motor vehicle record information of her spouse under section 552.023 of the Government Code and it may not be withheld from her under section

¹The 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).

552.130. *See id.* § 552.023(a); ORD 481 at 4. The city must withhold the information we marked that pertains to an individual other than the requestor's spouse under section 552.130.

In summary, to the extent the requestor is not the spouse of the individual at issue or is not acting as her spouse'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. To the extent the requestor is the spouse of the individual at issue and is acting as her spouse's authorized representative, the city must (1) withhold the date of birth we marked under section 552.101 in conjunction with common-law privacy, (2) withhold the information we marked under section 552.130 of the Government Code, and (3) 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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/gw

Ref: ID# 747526

Enc. Submitted documents

c: Requestor
(w/o enclosures)