



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 14, 2019

Ms. Megan Rathel  
Assistant City Attorney  
City of Waco  
P. O. Box 2570  
Waco, Texas 76702-2570

OR2019-07182

Dear Ms. Rathel:

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# 754748 (Reference No. LGL 18-349).

The City of Waco (the "city") received a request for all information related to a specified incident. You state you will release some information. You state the city will redact information pursuant to sections 552.130(c) and 552.147(b) of the Government Code.<sup>1</sup> Further, you state you will withhold dates of birth of public citizens pursuant to the previous determination issued in Open Records Letter No. 2018-15072 (2018).<sup>2</sup> 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 representative sample of information.<sup>3</sup>

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<sup>1</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person without the necessity of requesting a decision from this office under the Act. *See id.* § 552.147(b).

<sup>2</sup>Open Records Letter No. 2018-15072 is a previous determination authorizing the city to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office. *Gov't Code* § 552.301(a); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

<sup>3</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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. Upon review, we find the submitted information contains information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entirety must be withheld to protect the individual’s privacy. In this instance, withholding only the individual’s identity or certain details of the report 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 withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>4</sup>

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](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,



Emily Buchanan  
Attorney  
Open Records Division

EB/gw

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Ref: ID# 754748

Enc. Submitted documents

c: Requestor  
(w/o enclosures)