



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 25, 2019

Mr. Neal Falgoust
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767

OR2019-08213

Dear Mr. Falgoust:

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# 756053 (ORR# R009799 and R009800).

The Austin Police Department (the "department") received two requests from the same requestor for information pertaining to two named individuals, including specified phone records and internal affairs documents. 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 representative sample of information.¹

Section 552.101 of the Government Code excepts "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 demonstrated. *See id.* at 681-82.

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

Upon review, we agree 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 the individual is withheld. However, in certain instances, the entirety of the information must be withheld to protect the individual's privacy. In this instance, withholding only the individual's identity or certain details of the information at issue 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 department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.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,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/gw

Ref: ID# 756053

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining argument against disclosure.