



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 29, 2019

Mr. Brandon D. Morris  
Counsel for the City of Rosenberg  
Randle Law Office LLP  
820 Gessner, Suite 1570  
Houston, Texas 77024-4494

OR2019-08653

Dear Mr. Morris:

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# 757208.

The City of Rosenberg (the "city"), which you represent, received a request for information pertaining to a specified animal. The city states it has released some of the requested information, but claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note the city has redacted dates of birth and telephone numbers from the submitted documents. The city does not assert, nor does our review of our records indicate, it has been authorized to withhold any such information without seeking a ruling from this office. *See Gov't Code § 552.301(a); Open Records Decision No. 673 (2000)*. Because we can discern the nature of the information that has been redacted, being deprived of it does not inhibit our ability to make a ruling in this instance. Nevertheless, be advised a failure to

provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering that the redacted information be released. See Gov't Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested"), .302.

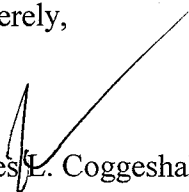
Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly 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. 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.). The requestor has a right of access to her client's date of birth pursuant to section 552.023 of the Government Code. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Nevertheless, the city must withhold the remaining date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the redacted telephone numbers do not satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, this information is not confidential under common-law privacy, and the city may not withhold it under section 552.101 on that ground. Therefore, the city must release the remaining information.

Finally, the city asks this office to issue a previous determination permitting it to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. See Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). However, we decline to issue one at this time. Accordingly, this letter ruling is limited to the particular records 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 records 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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/gw

Ref: ID# 757208

Enc. Submitted documents

c: Requestor  
(w/o enclosures)