



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

April 10, 2019

Ms. Lynn Trumbul  
Senior Assistant City Secretary  
City of Hutto  
401 West Front Street  
Hutto, Texas 78634

OR2019-09642

Dear Ms. Trumbul:

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# 766858.

The City of Hutto (the "city") received a request for all incident reports involving the requestor's address. You state the city has released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 (1986). You state the information at issue pertains to criminal investigations that did not result in convictions or deferred adjudications. Based on this representation, we agree section 552.108(a)(2) is applicable to the information you

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<sup>1</sup>Although you do not cite section 552.101 or section 552.130 of the Government Code in your brief, we understand you to raise these exceptions based upon your markings.

criminal investigations that did not result in convictions or deferred adjudications. Based on this representation, we agree section 552.108(a)(2) is applicable to the information you marked. Accordingly, the city may withhold the information you marked under section 552.108(a)(2) of the Government Code.<sup>2</sup>

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 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 has 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. *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 conclude some of the submitted information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we marked and the public citizens’ dates of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern, and the city may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of 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 personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov’t Code § 552.130. Accordingly, the city must withhold the motor vehicle record information you marked under section 552.130 of the Government Code.

In summary, the city may withhold the information you marked under section 552.108(a)(2) of the Government Code. The city must withhold the information we marked and the public citizens’ dates of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

information you marked under section 552.130 of the Government Code. The city must release the remaining information.<sup>3</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,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/jxd

Ref: ID# 766858

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note the requestor has a right of access to some of the information being released in this instance. See Gov't Code § 552.023(a) ("person or 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 herself). Accordingly, if the city receives another request for this same information from a different requestor, the city must again seek a ruling from this office.