



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 21, 2019

Mr. Chuck Hester
City Attorney
City of Canyon
301 16th Street
Canyon, Texas 79015

OR2019-13502

Dear Mr. Hester:

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# 766692.

The Canyon Police Department (the "department") received a request for a specified report. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). The submitted information indicates the department received the request for information on February 25, 2019. Because you do not inform this office the department was closed for business any of the days at issue, we find the department's ten-business-day deadline was March 11, 2019. Our office received the instant request for a ruling on March 19, 2019. There is no postmark date on the envelope in which the request for a ruling was sent to this office, and we are otherwise unable to determine the department mailed this information on or before March 19, 2019. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class

United States mail and common or contract carrier). Thus, the department failed to comply with the requirements of section 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). Because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will address the applicability of section 552.101 to the submitted information.¹ However, we find you have failed to establish a compelling reason to address the exception you raise.

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. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Additionally, we note the doctrine of common-law privacy generally protects the identifying information of juvenile victims of abuse. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. Further, 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 portions of the submitted information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note the requestor has a special right of access under section 552.023 of the Government Code to information pertaining to herself or her minor children that would otherwise be withheld to protect their 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).

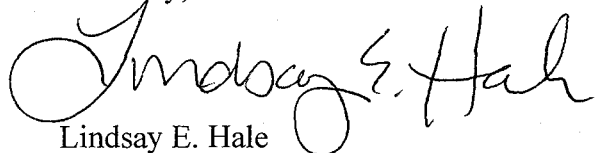
¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Additionally, if the requestor is acting as the authorized representative of her spouse, she has a right of access to his date of birth pursuant to section 552.023 and it may not be withheld from her under section 552.101 in conjunction with common-law privacy. Therefore, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy; however, the department may not withhold from this requestor her spouse's date of birth if she is acting as the authorized representative of her spouse. As no further exceptions to disclosure have been raised, the department must release the remaining information to this requestor.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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/eb

Ref: ID# 766692

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Because the requestor has a right of access beyond that of the general public to some of the information being released, if the department receives another request for this information from an individual other than this requestor, the department must again seek a ruling from this office. See Gov't Code § 552.023(a); ORD 481 at 4.