



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 24, 2019

Mr. Stephen D. Gates  
First Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702

OR2019-17160

Dear Mr. Gates:

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# 771760 (ORR No. M026271).

The City of Midland (the "city") received a request for information pertaining to a specified incident involving two named individuals. 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 information.

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 information protected by other statutes, such as chapter 57B of the Code of Criminal Procedure. Article 57B.02 of the Code of Criminal Procedure provides, in relevant part, that "[a] victim [of family violence] may choose a pseudonym to be used instead of the victim's name to designate the victim in all public files and records concerning the offense, including police summary reports, press releases, and records of judicial proceedings." Article 57B.02(d) provides, in pertinent part:

(d) A completed and returned pseudonym form is confidential and may not be disclosed to any person other than a defendant in the case or the defendant's attorney, except on an order of a court of competent jurisdiction.

*Id.* art. 57B.02(b). In addition, article 57B.03 provides that:

(a) A public servant with access to the name, address, or telephone number of a victim 17 years of age or older who has chosen a pseudonym under this chapter commits an offense if the public servant knowingly discloses the name, address, or telephone number of the victim to any person who is not assisting in the investigation or prosecution of the offense or to any person other than the defendant, the defendant's attorney, or the person specified in the order of a court of competent jurisdiction.

*Id.* art. 57B.03(a). We note the victim in this matter elected to be designated by a pseudonym in accordance with chapter 57B of the Code of Criminal Procedure. Accordingly, we find the city must withhold the form we marked under section 552.101 of the Government Code in conjunction with article 57B.02 of the Code of Criminal Procedure. We also note the victim used a pseudonym in some of the submitted information, but the remaining information contains the information pertaining to the victim that falls under article 57B.03. Accordingly, we find the city must withhold the name, address, and telephone number of the victim under section 552.101 of the Government Code in accordance with article 57B.03(a) of the Code of Criminal Procedure. *See* Open Records Decision No. 584 (1991) (statute making release of information criminal offense deems information confidential by law for purposes of section 552.101). We find you have not demonstrated any of the remaining submitted information is made confidential under article 57B.03(a), and thus, none of the remaining information may be withheld under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code also 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. The 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 find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we marked and all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with 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 a personal identification document issued by an agency of this state or another state or country is

excepted from public release.<sup>1</sup> Gov't Code § 552.130. Upon review, we find the city must withhold the information we marked under section 552.130 of the Government Code.

In summary, the city must withhold the form we marked under section 552.101 of the Government Code in conjunction with article 57B.02(d) of the Code of Criminal Procedure and the name, address, and telephone number of the victim under section 552.101 of the Government Code in accordance with article 57.02(d) of the Code of Criminal Procedure. The city must withhold the information you marked and all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we marked under section 552.130 of the Government Code. The city must release the remaining information.

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,



Britni Ramirez  
Assistant Attorney General  
Open Records Division

BR/sb

Ref: ID# 771760

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>The 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).