



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 24, 2019

Mr. Joseph J. Gorfida, Jr.
Counsel for the City of Sachse
Nichols, Jackson, Dillard, Hager & Smith, L. L. P.
500 North Akard Street, Suite 1800
Dallas, Texas 75201

OR2019-20180

Dear Mr. Gorfida:

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# 776703 (Ref. No. 107945).

The City of Sachse (the “city”), which you represent, received a request for all incident and call reports involving the requestor, a named individual, and a specified address during a specified time period. You state you have released some information to the requestor. You state you will withhold information under sections 552.130(c) and 552.147(b) of the Government Code and Open Records Letter No. 2018-22059 (2018).¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov’t Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. *See id.* § 552.147(b). Open Records Letter No. 2018-22059 authorizes the city to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general’s decision. *See id.* § 552.301(a); Open Records Decision No. 673 at 7-8 (2001).

Code § 552.101. This section 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. This common-law right to privacy protects the identifying information of a complainant in certain situations based on the facts of the case. *See* Open Records Decision No. 394 (1983); *see also* Open Records Decision No. 339 (1982) (concluding common-law privacy protects identifying information of victim of serious sexual offense). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entirety of the requested information must be withheld to protect the individual's privacy. Withholding only the individual's identity or certain details of one of the reports 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 city must withhold the information related to report number 1801488 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.²

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). You state the remaining information you have marked pertains to criminal cases that concluded in results other than convictions or deferred adjudications. Therefore, we agree section 552.108(a)(2) is applicable to this information.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the city may withhold the remaining information you have marked under section 552.108(a)(2) of the Government Code.

In summary, the city must withhold the information related to report number 1801488 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, which must be released, the city may

²As our ruling is dispositive, we need not address your arguments against disclosure of this information.

withhold the remaining information you have marked under section 552.108(a)(2) of the Government Code. The city must release the remaining information to this requestor.³

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/jxd

Ref: ID# 776703

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the requestor has a right of access to his own otherwise private information. *See Gov't Code* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). As noted above, section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Furthermore, as noted above section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b). Finally, as noted above, Open Records Letter No. 2018-22059 is a previous determination issued to the city authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.