



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 31, 2019

Ms. Jessica Farrias
Administrative Support Specialist
City of Carrollton
1945 East Jackson
Carrollton, Texas 75006

OR2019-21065

Dear Ms. Farrias:

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# 778414 (City ID Nos. 16271; 16318).

The City of Carrollton (the "city") received a request for police records pertaining to incidents over a specified date range. The city claims the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions the city claims and reviewed the submitted information.

Initially, we note some of the submitted information, which we have indicated, is not responsive to the instant request for information because it does not pertain to incidents within the specified date range in the request or was created after the date the city received the instant request for information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983). This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.

We understand the city to raise section 552.101 of the Government Code in conjunction with section 71.004 of the Family Code. 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. This section encompasses information

protected by other statutes. Section 71.004 of the Family Code defines the term “family violence.” See Fam. Code § 71.004. The city generally asserts this section makes the submitted responsive information confidential. However, as noted, this section only defines a certain term and does not make any information confidential. See Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public). Therefore, none of the information at issue is confidential under section 71.004 of the Family Code. Consequently, the city may not withhold any of the submitted responsive information under section 552.101 of the Government Code on the basis of section 71.004 of the Family Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common-law privacy 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, 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.). We note, however, the requestor has a right of access to his own date of birth and it may not be withheld from him under section 552.101 on the basis of common-law privacy. See Gov’t Code § 552.023(a)-(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).

Upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the city has failed to demonstrate any of the remaining responsive information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold the remaining information under section 552.101 of the Government Code on that basis.

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. Upon review, we find the city has

failed to demonstrate any of the remaining responsive information consists of motor vehicle record information for purposes of section 552.130. Accordingly, the city may not withhold the remaining information under section 552.130 of the Government Code.

In summary, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release the remaining responsive information.¹

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,



Lecelle Clarke
Attorney
Open Records Division

LC/eb

Ref: ID# 778414

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the requestor has a right of access to some of the information being released. See Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the city receives another request for the same information from a different requestor, the city must again seek a decision from this office.