



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 16, 2019

Ms. Judith N. Benton
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2019-22817

Dear Ms. Benton:

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# 781865 (ORR# LGL 19-096).

The City of Waco (the "city") received a request for information pertaining to specified incidents. The city states it is withholding some of the requested information pursuant to Open Records Letter No. 2018-15072 (2018).¹ The city also states it has released some of the requested information, but claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.² We have considered the claimed exception 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 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

¹Open Records Letter No. 2018-15072 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* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001).

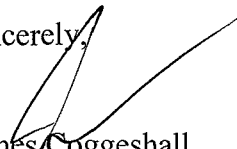
²Although the city also raises section 552.108 of the Government Code, it has not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume the city no longer asserts this exception. *See* Gov't Code §§ 552.301, .302.

test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in the *Industrial Foundation* decision. *Id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entirety of the information must be withheld to protect the individual's privacy. The requestor knows the identity of the individual involved and the nature of some of the reports at issue. Therefore, withholding only the individual's identity or certain details of the incidents from the 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 these reports in their entireties, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. We also find some of the remaining information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. However, the remaining information is not confidential under common-law privacy, and the city may not withhold it under section 552.101 on that ground. Thus, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, but 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



James Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 781865

Enc. Submitted documents

c: Requestor
(w/o enclosures)