



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 21, 2019

Mr. Ryan D. Pittman
Counsel For The City Of Wylie
Abernathy, Roeder, Boyd & Hullet, P. C.
1700 Redbud Boulevard, Suite 300
McKinney, Texas 75069

OR2019-23228

Dear Mr. Pittman:

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# 781858 (ORR# 2781527).

The Wylie Police Department (the "department"), which you represent, received a request for two specified incident reports. The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. 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 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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 some of the submitted information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. However, section 552.023 of the Government Code provides a governmental body may not deny access to a person or a person's representative to whom the information relates on the grounds that the information is considered confidential under privacy principles. Gov't Code § 552.023(a); see Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). The requestor has a right of access to his own date of birth pursuant to section 552.023. In addition, the requestor may be a representative of the individual whose information we have marked under common-law privacy. Thus, if the requestor represents this individual, then the requestor has a right of access to this individual's private information pursuant to section 552.023 of the Government Code. Accordingly, the department must withhold the information we have marked and the submitted dates of birth under section 552.101 of the Government Code, unless the requestor has a right of access to this information pursuant to section 552.023 of the Government Code. The remaining information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.

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.¹ See Gov't Code § 552.130. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked and the submitted dates of birth under section 552.101 of the Government Code, unless the requestor has a right of access to this information pursuant to section 552.023 of the Government Code. The department must also withhold the information we have marked under section 552.130 of the Government Code. The department must release the remaining information.

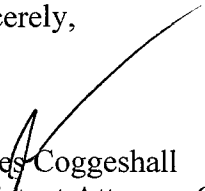
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

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/jxd

Ref: ID# 781858

Enc. Submitted documents

c: Requestor
(w/o enclosures)