



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

September 9, 2019

Mr. James Kopp  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2019-25180

Dear Mr. Kopp:

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# 784508 (COSA File No. W269652).

The City of San Antonio (the "city") received a request for all records related to a specified investigation. 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 representative sample of information.

Initially, we note you have only submitted two images for our review. Thus, although you state you have submitted a representative sample of the requested information, we find the submitted information is not representative of all the information to which the requestor seeks access. Please be advised this open records letter ruling applies only to the type of information you have submitted for our review. This ruling does not authorize the department to withhold any type of information that is substantially different from the types of information you submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public). Therefore, we presume you have released the information responsive to the remaining portions of the request, to the extent such information existed when the city received this request for information. If not, then you must release any such information at this time. *See id.* §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't 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. 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). Upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information consists of information pertaining to an identifiable individual that is highly intimate or embarrassing to an identifiable individual and not of legitimate public concern. Therefore, the city may not withhold the remaining information under section 552.101 that basis. Accordingly, 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 <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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/gw

Ref: ID# 784508

Enc. Submitted documents

c: Requestor  
(w/o enclosures)