



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 11, 2019

Ms. Deanne Lin
Assistant General Counsel
Harris County Attorney's Office
1019 Congress, 15th Floor
Houston, Texas 77002

OR2019-25416

Dear Ms. Lin:

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# 785301 (ORR# 19PIA0469).

The Office of the Harris County Constable, Precinct 5 (the "constable's office") received a request for information pertaining to a named individual and specified address. The constable's office 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.). Generally, only highly intimate information that implicates the privacy of an individual is

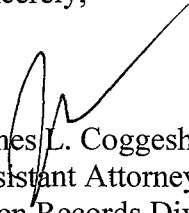
withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entirety of the information must be withheld to protect the individual's privacy.

The requestor has a right of access to his own date of birth pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Nevertheless, we find some of the remaining information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the constable's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining information is not confidential under common-law privacy, and the constable's office may not withhold it under section 552.101 on that ground. Therefore, the constable's office must release the remaining 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 <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 L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/be

Ref: ID# 785301

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹Because the requestor has a special right of access to some of the information being released, the constable's office must again seek a decision from this office if it receives another request for the same information from another requestor.