



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

October 1, 2019

Mr. Gustavo Martinez  
City Attorney  
City of Mission  
1201 East 8th Street  
Mission, Texas 78572

OR2019-27483

Dear Mr. Martinez:

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# 788588 (Ref. Nos. 2019-0586 and 2019-0596).

The City of Mission (the "city") received two requests from different requestors for a specified case number.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the city has redacted portions of the responsive information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See* Gov't Code § 552.301(a), (e)(1)(D). You do not assert, nor does our review of the records indicate, the city has been authorized to withhold this information without seeking a ruling from this office. *See id.* § 552.301(a); *see also* Open Records Decision 673 (2000). As such, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. However, because we can discern the nature of the redacted information, being deprived of the information does not inhibit our ability to make a ruling. Nonetheless, in the future, the city must not

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<sup>1</sup>As you did not submit a copy of the requestors' written requests for information, we take our description from your briefs to this office.

redact information from the information it submits to this office unless it is authorized to do so by statute or the information is the subject of a previous determination under section 552.301 of the Government Code. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See* Gov't Code § 552.302.

Next, we must address the city's procedural obligations under the Act. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). In this instance, you state the city received the present requests for information on July 10, 2019, and July 12, 2019. As of the date of this letter, the city has not submitted for our review a copy of either of the written requests for information. Consequently, we find the city has failed to comply with the requirements of section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). You claim sections 552.101 and 552.108 of the Government Code for the responsive information. Because section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address your argument under this section for the responsive information. However, we find you have failed to establish a compelling reason to address your remaining exception.

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 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). The 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.). However, we note an individual's telephone number and address is generally not highly intimate or embarrassing. *See Open Records Decision No. 554 at 3 (1990)* (disclosure of person's name, address, or telephone number not an invasion of privacy). Upon review, we find portions of the submitted information, which we marked, satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must generally withhold the information we 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 at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the requestors have a right of access to information pertaining to themselves that would otherwise be confidential under common-law privacy. *See Gov't Code § 552.023* (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests); *Open Records Decision No. 481 at 4 (1987)* (privacy theories not implicated when individual requests information concerning himself). Thus, the city may not withhold information pertaining to the respective requestors under section 552.101 in conjunction with common-law privacy. Further, we note the second requestor is the spouse of one of the individuals whose information is at issue and may be acting as his spouse's authorized representative. *See id.* Thus, if the second requestor is acting as the authorized representative of his spouse, then the city may not withhold information pertaining to the second requestor's spouse from him under section 552.101 of the Government Code on the basis of common-law privacy.

Accordingly, with the exception of the date of birth pertaining to each respective requestor, the city must withhold the dates of birth it redacted and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy; however, if the second requestor is acting as the authorized representative of his spouse, then the city may not withhold the information pertaining to his spouse under section 552.101 on this basis. The city must release the remaining information to the requestors.<sup>2</sup>

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.

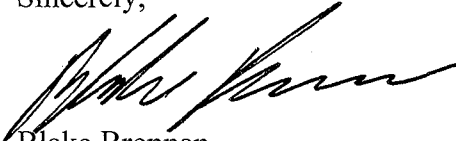
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and

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<sup>2</sup>As noted above, the requestors have a special right of access to some of the information being released in this instance. *See Gov't Code § 552.023(a)*; *ORD 481 at 4*. Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, then the city must again seek a ruling from this office.

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,



Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/jxd

Ref: ID# 788588

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)