



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 2, 2019

Mr. Ryan Brooke
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2019-27659

Dear Mr. Brooke:

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# 788874 (Ref. No. 2509).

The City of Lubbock (the "city") received a request for information pertaining to a specified incident involving a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim 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. This section encompasses the doctrine of constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). After review of the submitted information, we find portions of the information at issue, which we indicated, implicate an

individual's privacy interests for purposes of constitutional privacy. Accordingly, the city must withhold the information we indicated under section 552.101 in conjunction with constitutional privacy.¹

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. Further, 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 the requestor is an authorized representative of the individual named in the request. Thus, the requestor has a right of access to information pertaining to the named individual 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). Upon review, we find you have failed to demonstrate any portion of the remaining information 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.

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See* Gov't Code § 552.130. We note section 552.130 is designed to protect the privacy of individuals. Thus, the requestor has a right of access to his client's motor vehicle record information and it may not be withheld from him under section 552.130. *See id.* § 552.023; ORD 481 at 4. Therefore, the city may not withhold any portion of the remaining information under section 552.130 of the Government Code.

Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. *See* Gov't Code § 552.147. We note section 552.147 is designed to protect the privacy of individuals. Thus, the requestor has a right of access to his client's social security number and it may not be withheld from him under section 552.147. *See id.* § 552.023; ORD 481 at 4. Therefore, the city may not withhold any portion of the remaining information under section 552.147 of the Government Code.

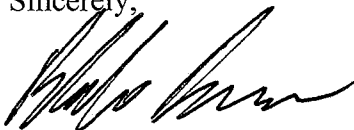
¹ As our ruling is dispositive, we need not address your arguments against disclosure of this information.

In summary, the city must withhold the information we indicated under section 552.101 in conjunction with constitutional privacy. The city must release the remaining information to this requestor.²

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,



Blake Brennan
Assistant Attorney General
Open Records Division

BBX/gw

Ref: ID# 788874

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² As noted above, the requestor has 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, the city must again seek a ruling from this office.