



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 18, 2019

Ms. M. Shelby Percy
Counsel for the City of Rowlett
Nichols Jackson Dillard Hager & Smith L.L.P.
500 North Akard Street, Suite 1800
Dallas, Texas 75201

OR2019-32466

Dear Ms. Percy:

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# 805606 (ORR 111647).

The City of Rowlett (the "city") received a request for information relating to a specified incident. 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 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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

The submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. In this instance, the submitted information reveals the requestor knows the identity of the individual involved as well as the nature of the information in some of the submitted reports. Therefore, withholding only the individual's identity or certain details of the incidents at issue from this requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the city must generally withhold the submitted information in its entirety under section 552.101 in conjunction with common-law privacy. However, we note the requestor is the spouse of the individual whose information is at issue and may be acting as that individual's authorized representative. In that event, the requestor has a right of access to information pertaining to her spouse that would ordinarily be withheld to protect the spouse's privacy interests. See Gov't Code § 552.023(a)-(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, we rule conditionally. To the extent the requestor is acting as the authorized representative of her spouse, the city may not withhold information pertaining to her spouse under section 552.101 on this basis. In that instance, the city must release the submitted information. To the extent the requestor is not acting as the authorized representative of her spouse, the city must withhold the submitted information in its entirety under section 552.101 in conjunction with common-law privacy.

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,

Jesse Harvey
Assistant Attorney General
Open Records Division

JHI/eb

Ref: ID# 805606

Enc. Submitted documents

c: Requestor
(w/o enclosures)