



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 2, 2019

Mr. Nathan Brown  
Assistant City Attorney  
City of New Braunfels  
550 Landa Street  
New Braunfels, Texas 78130

OR2019-33626

Dear Mr. Brown:

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# 798940 (PD Control# 3729-19).

The New Braunfels Police Department (the "department") received a request for information pertaining to a specified incident. You indicate the department has released some information. 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.

Initially, we note the requestor has excluded social security numbers, driver's license numbers, dates of birth, home addresses, personal phone numbers, and e-mail addresses from the request. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release such information in response to this request.

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 *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). 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 entire report must be withheld to protect the individual's privacy.

You claim the submitted information is protected in its entirety by common-law privacy. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which this information must be withheld in its entirety on that basis. Thus, the department may not withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have not demonstrated how any of the remaining responsive information is highly intimate or embarrassing and of no legitimate public interest; thus, none of the remaining responsive information may be withheld under section 552.101 in conjunction with common-law privacy. The department must release the remaining responsive 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,



Kelly McWethy  
Assistant Attorney General  
Open Records Division

KM/jxd

Ref: ID# 798940

Enc. Submitted documents

c: Requestor  
(w/o enclosures)