



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 4, 2019

Mr. L. Brian Narvaez
Counsel for the City of McKinney
Brown & Hoffmeister, L. L. P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2019-34051

Dear Mr. Narvaez:

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# 799947 (ORR# P012623-091119).

The City of McKinney (the "city"), which you represent, received a request for information pertaining to a named individual. The city states it is withholding some of the requested information pursuant to section 552.130(c) of the Government Code and Open Records Letter No. 2018-07366 (2018).¹ The city claims some of 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor pursuant to section 552.130(e). *See id.* § 552.130(d), (e). Open Records Letter No. 2018-07366 authorizes the city to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general's decision. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001).

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). Upon review, we find some of the submitted information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.² *See* Gov't Code § 552.1175. The city must withhold the information we have marked under section 552.1175 of the Government Code if the individual at issue is a licensed peace officer and elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code. However, the city may not withhold this information under section 552.1175 if the individual either is not a currently licensed peace officer or does not elect to restrict access to this information in accordance with section 552.1175(b).

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold the information we have marked under section 552.1175 of the Government Code if the individual at issue is a licensed peace officer and elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code. The city must release the remaining information.

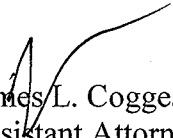
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

² **Error! Main Document Only.** The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

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/gw

Ref: ID# 799947

Enc. Submitted documents

c: Requestor
(w/o enclosures)