



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 10, 2019

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

OR2019-34785

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# 800401 (PD Control# 3827-19).

The New Braunfels Police Department (the "department") received two requests from the same requestor for information pertaining to a named individual and a specified address during a certain time period, including a specified incident. You indicate the department will withhold motor vehicle record information pursuant to section 552.130(c) of the Government Code.<sup>1</sup> You claim some of 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

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<sup>1</sup> Section 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 in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

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 Third 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.). Further, we note the telephone numbers of living members of the public are generally not highly intimate or embarrassing. *See* Open Records Decision Nos. 551 at 3 (disclosure of person's name, address, or telephone number not invasion of privacy), 455 at 7 [(1987)] (home addresses and telephone numbers not protected under privacy). Upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the telephone numbers, the department must withhold the information you marked and the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>2</sup> However, the department has failed to demonstrate the telephone numbers you marked are highly intimate or embarrassing and of no legitimate public interest. Thus, the department may not withhold the telephone numbers you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department 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 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

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<sup>2</sup> Although the requestor is a representative of the New Braunfels Housing Authority, he does not indicate he has a right of access to the information being withheld under state or federal law. *See* Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986).

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)