



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 13, 2019

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

OR2019-35267

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# 802046 (ORR# 2019-699, 2019-714).

The Town of Prosper (the "town"), which you represent, received two requests from different requestors for information pertaining to a specified incident. The town states it is withholding some of the requested information pursuant to Open Records Letter No. 2018-06049 (2018).<sup>1</sup> The town also 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.

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

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<sup>1</sup> Open Records Letter No. 2018-06049 authorizes the town to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001).

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. This office has found the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information, *see* Open Records Decision No. 455 (1987); and personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990). Generally, only highly intimate information that implicates the privacy of an individual is withheld. 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 entirety of the information must be withheld to protect the individual's privacy.

The second requestor knows the identity of the individual involved and the nature of the incident in the submitted information. Therefore, withholding only the individual's identity or certain details of the incident from the second 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 town must withhold the submitted information in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy. This is not a situation in which the entirety of the submitted information must be withheld from the first requestor on that ground. Nevertheless, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the town must withhold this information from the first requestor, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining information is not confidential under common-law privacy, and the town may not withhold it under section 552.101 on that ground. Therefore, the town must release the remaining information to the first requestor.


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,

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/jxd

Ref: ID# 802046

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)