



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 8, 2020

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

OR2020-00728

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# 813575 (PD Control No. 5018-19).

The New Braunfels Police Department (the "department") received a request for a specified incident report. You claim portions of the submitted information are 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. This section 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). 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.). Upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, with the

exception of the information we have marked for release, the department must withhold the information you have marked and the additional information we have marked to withhold under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the department may not withhold the any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.¹ See Gov't Code § 552.130. Upon review, we find the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, with the exception of the information we have marked for release, the department must withhold the information you have marked and the additional information we have marked to withhold under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. 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,



Tim Neal
Assistant Attorney General
Open Records Division

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¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

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Enc. Submitted documents

c: Requestor
(w/o enclosures)