



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 8, 2020

Ms. Brandy Kidwell
Manager, Records Division
North Richland Hills Police Department
P.O. Box 820609
North Richland Hills, Texas 76182-0609

OR2020-00740

Dear Ms. Kidwell:

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# 805335 (NRHPD ORL 9-1358 07NP010239).

The North Richland Hills Police Department (the "department") received a request for information pertaining to a specified incident. The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the department claims and reviewed the submitted information.

Initially, we note the requestor, in her official capacity as a special investigator assistant with the California Department of Social Services, asserts she has right of access to the requested information under various California Health & Safety and Welfare & Institutions codes. The Act generally does not incorporate the confidentiality or access provisions of other states' statutes and regulations because those laws only govern the disclosure of information held by those states. *But see* Open Records Decision No. 561 at 6-7 (1990) (noting that if agency of federal government shares its information with Texas governmental entity, Texas entity must withhold information that federal agency determined to be confidential under federal law). The requested information is maintained by the department, which is subject to the state laws of Texas. Thus, although these California provisions may authorize the requestor to obtain certain information, these statutes do not grant the requestor access to records of a Texas governmental body that are excepted from disclosure under the Act. Accordingly, we will address the department's argument against disclosure of 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 information protected by article 57.02 of the Code of Criminal Procedure.¹ Article 57.02(d) provides a completed pseudonym form is confidential and may not be disclosed to any person other than a defendant in the case or the defendant’s attorney, except by court order. Crim. Proc. Code art. 57.02(d). The submitted information includes a pseudonym form. Therefore, the department must withhold the pseudonym form we have marked in its entirety under section 552.101 of the Government Code in accordance with article 57.02(d) of the Code of Criminal Procedure.

Section 552.101 of the Government Code also 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. Further, in Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d at 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). 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.). 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 entire report must be withheld to protect the individual’s privacy. Although the department seeks to withhold the entirety of the remaining information under section 552.101 in conjunction with common-law privacy, we note the department has not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on that basis. Accordingly, the department may not withhold the entirety of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. Nevertheless, upon review, we find some of the remaining information is highly intimate or embarrassing and not of legitimate public concern. We note portions of this information pertain to an individual who will be de-identified or only identified by a pseudonym and whose privacy interests will, thus, be protected. Thus, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction

¹ Although the department cites to article 57.01 of the Code of Criminal Procedure in its brief, we understand the department to raise section 552.101 in conjunction with article 57.02 based on the substance of its argument.

with common-law privacy. However, we find the remaining information is not confidential under common-law privacy and the department may not withhold it under section 552.101 on that ground.

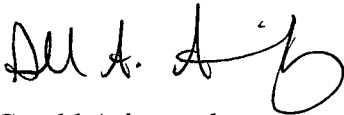
We note some of the remaining information is subject to section 552.130 of the Government Code.² Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, the department must withhold the pseudonym form we have marked in its entirety under section 552.101 of the Government Code in accordance with article 57.02(d) of the Code of Criminal Procedure. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we 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,



Gerald Arismendez
Assistant Attorney General
Open Records Division

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² 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 Nos. 481 (1987), 480 (1987), 470 (1987).

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Enc. Submitted documents

c: Requestor
(w/o enclosures)