



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

February 11, 2020

Mr. Matthew L. Butler  
Counsel for the City of Hurst  
Boyle & Lowry, L.L.P.  
4201 Wingren Drive, Suite 108  
Irving, Texas 75062-2763

OR2020-04195

Dear Mr. Butler:

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# 818137 (File No. PD-3-2020).

The City of Hurst (the "city"), which you represent, received a request for a specified incident report. You claim 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. 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 or 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.).

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 you seek to withhold the submitted information in its entirety under section 552.101 in conjunction with common-law privacy, we find you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the submitted information must be withheld on that basis. Accordingly, the city may not withhold the entirety of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. Nevertheless, upon review, we find portions of the submitted information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have marked and all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further arguments against disclosure, 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 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

TN/gw

Ref: ID# 818137

Enc. Submitted documents

c: Requestor  
(w/o enclosures)