



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 14, 2020

Mr. Eric Gutierrez  
Assistant City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2020-04763

Dear Mr. Gutierrez:

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# 819783 (ORR# 20-1026-11074).

The El Paso Police Department (the "department") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The department generally asserts the submitted information pertains to an active criminal case. However, the submitted information relates to a report of harassment. The statute of limitations for harassment is two years from the date of the offense. *See Penal Code* § 42.07(c) (harassment is a Class B misdemeanor, except that the offense is a Class A misdemeanor in specified circumstances); *see also Crim. Proc. Code art. 12.02(a)* (indictment or information for Class

A or Class B misdemeanor must be presented within two years from the date of the commission of the offense, and not afterward). More than two years have elapsed since the underlying incident occurred. The department does not inform us any criminal charges were filed within the applicable limitations period. Accordingly, we find the department has failed to demonstrate the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. See Gov't Code § 552.108(a)(1). Therefore, the department may not withhold the submitted information under section 552.108(a)(1) of the Government Code.

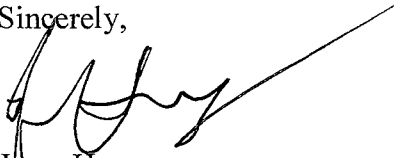
Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or 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 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. 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 information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, with the exception of the requestor's date of birth, to which the requestor has a right of access pursuant to section 552.023 of the Government Code, the department must also withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. See Gov't Code § 552.023(a) (“person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). As it raises no other exceptions to disclosure, 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,

A handwritten signature in black ink, appearing to read 'Jesse Harvey', with a long horizontal stroke extending to the right.

Jesse Harvey  
Assistant Attorney General  
Open Records Division

JHI/mo

Ref: ID# 819783

Enc. Submitted documents

c: Requestor  
(w/o enclosures)