



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 10, 2020

Ms. Dayana Chavez
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2020-07529

Dear Mr. Chavez:

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# 817086 (ORR# 16486).

The Baytown Police Department (the "department") received a request for specified incident reports. The department states it has released some of the requested information, but claims 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. This section encompasses sections 93.002 and 93.003 of the Family Code. Section 93.002 of the Family Code provides, "[a] written or oral communication between an advocate and a victim made in the course of advising, advocating for, counseling, or assisting the victim is confidential and may not be disclosed." *Id.* § 93.002. Furthermore, section 93.003 of the Family Code provides as follows:

- (a) A victim has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication described by Section 93.002
- (b) The privilege may be claimed by:

- (1) a victim or a victim's attorney on a victim's behalf;
- (2) a parent, guardian, or conservator of a victim under 18 years of age; or
- (3) an advocate or a family violence center on a victim's behalf.

Id. § 93.003; *see also id.* § 93.001 (defining “advocate,” “family violence center,” and “victim”). Upon review, we find the department has not demonstrated any of the submitted information consists of a communication subject to section 93.002 of the Family Code. Accordingly, we find the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with sections 93.002 and 93.003 of the Family Code.

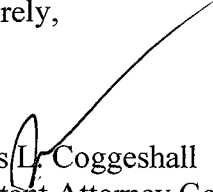
Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. 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 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.). The department must withhold the submitted dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. We also find some of the remaining information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the department must also withhold the information 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 department may not withhold it under section 552.101 on that ground. Therefore, 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 817086

Enc. Submitted documents

c: Requestor
(w/o enclosures)