



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 18, 2020

Ms. Karen Strand
Senior Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2020-08580

Dear Ms. Strand:

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# 824669.

The City of Mesquite (the "city") received a request for information pertaining to specified incidents. You state you released some information. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. 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, which we marked, satisfies the standard articulated by

the Texas Supreme Court in *Industrial Foundation*. However, we note the requestor is the spouse of one of the individuals whose privacy is at issue, and may be acting as his spouse's authorized representative. As such, the requestor may have a right of access to information pertaining solely to his spouse pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (“[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the 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 individuals request information concerning themselves). Thus, if the requestor is acting as his spouse’s authorized representative, then he has a right of access to this individual’s date of birth pursuant to section 552.023(a), and this information may not be withheld under section 552.101 in conjunction with common-law privacy. Conversely, if the requestor is not acting as his spouse’s authorized representative, the city must withhold this individual’s date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. In either event, the city must withhold the remaining information we marked 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. *See* Gov’t Code § 552.130. We note section 552.130 protects privacy interests. Further, as noted above, the requestor may be acting as his spouse’s authorized representative, and may have a right of access to information pertaining solely to his spouse that would otherwise be confidential. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, if the requestor is acting as the authorized representative of his spouse, then the city may not withhold the portions of the marked information pertaining solely to the requestor’s spouse under section 552.130. If the requestor is not acting as this individual’s authorized representative, then the city must withhold the information we marked under section 552.130. In either event, the city must withhold the information we marked pertaining to the other individual under section 552.130 of the Government Code.

In summary, the city must generally withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy and the motor vehicle record information we marked under section 552.130 of the Government Code. However, if the requestor is acting as his spouse’s authorized representative, then the city may not withhold this individual’s date of birth under section 552.101 of the Government Code in conjunction with common-law privacy or the motor vehicle record information we marked pertaining to this individual under section 552.130 of the Government Code. In either event, the city must withhold the remaining information we marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. 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,

Meagan Hunter
Assistant Attorney General
Open Records Division

MH/be

Ref: ID# 824669

Enc. Submitted documents

c: Requestor
(w/o enclosures)