



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 25, 2020

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

OR2020-09235

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# 819008.

The City of Mesquite (the "city") received a request for information pertaining to a specified incident involving the requestor. The city states it will redact the public citizens' dates of birth you marked pursuant to Open Records Letter No. 2015-24970 (2015).¹ 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 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 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

¹ Open Records Letter No. 2015-24970 authorizes the city to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

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. The 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). 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). Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated any of the remaining information you have marked is highly intimate or embarrassing and not of legitimate concern to the public. Thus, none of the remaining information may be withheld under section 552.101 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 a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130. Upon review, we find the city must withhold the information you marked under section 552.130 of the Government Code.

In summary, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information you marked under section 552.130 of the Government Code. The city must release the remaining information.²

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

² We note the information being released contains the requestor's date of birth and motor vehicle record information, to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a).

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,

Britni Ramirez
Assistant Attorney General
Open Records Division

BR/gw

Ref: ID# 819008

Enc. Submitted documents

c: Requestor
(w/o enclosures)