



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

April 8, 2020

Mr. Stephen D. Gates  
First Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79701

OR2020-10544

Dear Mr. Gates:

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# 821061 (Request ID# M029078-012020).

The City of Midland (the "city") received a request for information pertaining to eight specified incidents on specified dates. You state you released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state Exhibits B and C relate to closed criminal investigations that did not result in convictions or deferred adjudications. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to Exhibits B and C.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, the property involved. *See id.* at 3-4. Thus, with the exception of the basic information, which must be released, the city may withhold Exhibits B and C under section 552.108(a)(2) of the Government Code.<sup>1</sup>

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 of the Government Code 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.* Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *See id.* at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 523 (1989) at 4 (common-law privacy protects credit reports, financial statements, and other personal financial information). Upon review, we find the information we marked satisfies the standard articulated in *Industrial Foundation*. Therefore, the city must withhold the bank information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of the basic information, which must be released, the city may withhold Exhibits B and C under section 552.108(a)(2) of the Government Code. In releasing the basic information, the city must withhold the bank information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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

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<sup>1</sup> As our ruling is dispositive, we do not address the applicability of section 1701.661(a) of the Occupations Code to the submitted video recordings. *See generally* Occ. Code § 1701.661(a), (e).

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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,

Pearlie Gault  
Attorney  
Open Records Division

PG/jxd

Ref: ID# 821061

Enc. Submitted documents

c: Requestor  
(w/o enclosures)