



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 14, 2020

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

OR2020-10901

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# 822076.

The City of Mesquite (the "city") received a request for information related to a specified accident. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.136 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. This section encompasses information made confidential by other statutes, such as section 143.090 of the Local Government Code. You state the city is a civil service city under chapter 143 of the Local Government Code. Section 143.090 provides:

A department . . . or municipality may not release a photograph that depicts a police officer unless:

- (1) the officer has been charged with an offense by indictment or by information;

- (2) the officer is a party in a civil service hearing or a case before a hearing examiner or in arbitration;
- (3) the photograph is introduced as evidence in a judicial proceeding;
or
- (4) the officer gives written consent to the release of the photograph.

Local Gov't Code § 143.090. You state the information you indicated consists of photographs that depict police officers. You inform us the police officers depicted in the photographs at issue have not provided the city with written consent regarding the release of the photographs. You further inform us none of the remaining exceptions under section 143.090 are applicable. Accordingly, the city must withhold the photographs depicting police officers, which you indicated, under section 552.101 of the Government Code in conjunction with section 143.090 of the Local Government Code.¹

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 *Industrial Foundation*. *Id.* at 683. This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information you indicated and the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.²

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See* Gov't Code § 552.130. Accordingly, the city must withhold the information you indicated and the additional information we marked under section 552.130 of the Government Code.

¹ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

² As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

In summary, the city must withhold the information you indicated under section 552.101 of the Government Code in conjunction with section 143.090 of the Local Government Code. The city must withhold the information you indicated and the additional information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information you indicated and the additional information we marked under section 552.130 of the Government Code. The city must release the remaining information.³

Finally, the city asks this office to issue a previous determination permitting it to withhold personal financial information under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office. *See id.* § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). However, we decline to do so at this time. Accordingly, this letter ruling is limited to the particular records 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 records 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,

Sean McCormick
Attorney
Open Records Division

SMC/gw

Ref: ID# 822076

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ We note the requestor has a right of access to some of the motor vehicle record information being released. *See Gov't Code* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, if the city receives another request for the same information from a different requestor, the city must again seek a decision from this office.