



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 22, 2020

Mr. Michael Shaunessy  
Counsel for the City of Hutto  
McGinnis Lochridge  
600 Congress Avenue, Suite 2100  
Austin, Texas 78701

OR2020-11419

Dear Mr. Shaunessy:

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# 824161 (Reference No. R000983-013020).

The City of Hutto (the "city"), which you represent, received a request for text messages regarding a former city employee during a specified time period. You state the city has released some information, but claim some of the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the present request because it is from outside the specified time period. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release that information in response to the request.

Section 552.101 of the Government Code excepts from public 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 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).

Upon review, we conclude some of the information you seek to withhold meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we find no portion of the remaining responsive information you have marked is highly intimate or embarrassing and of no legitimate public concern. Accordingly, except for the information we have marked for release, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential.

You inform us the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code. Accordingly, the city must withhold the information we marked under section 552.117(a)(1) of the Government Code. However, none of the remaining information you marked is subject to section 552.117, and the city may not withhold it on that basis.

Section 552.136 of the Government Code provides, “[notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the city must withhold the information you marked under section 552.136 of the Government Code.

In summary, except for the information we have marked for release, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we marked under section 552.117(a)(1) of the Government Code. The city must withhold the information you marked under section 552.136 of the Government Code. The city must release the remaining responsive 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,

Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/mo

Ref: ID# 824161

Enc. Submitted documents

c: Requestor  
(w/o enclosures)