



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 17, 2020

Mr. Alexander Garcia  
Assistant City Attorney  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2020-16248

Dear Mr. Garcia:

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# 834143 (ORR# GHal2).

The Corpus Christi Police Department (the "department") received a request for case number 1910180112. The department claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the department claims 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. Upon review, we find some of the submitted information, which we marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must generally withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the department has not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

Some of the remaining information may be subject to section 552.1175 of the Government Code.<sup>1</sup> Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). We note section 552.1175 protects personal privacy. Some of the remaining information, which we marked, relates to an individual who is licensed as a peace officer of another law enforcement agency. Accordingly, if the licensed peace officer at issue elects to restrict access to the information in accordance with section 552.1175(b), then the department must generally withhold the information we marked under section 552.1175 of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service. Conversely, if the licensed peace officer whose information is at issue does not elect to restrict access to the information in accordance with section 552.1175(b), then the marked information may not be withheld under section 552.1175.

In this instance, however, the requestor indicates he is an attorney for one of the individuals who was involved in the incident at issue. Thus, the requestor is the authorized representative of that individual, and has a right of access to private information pertaining to his client that would otherwise be confidential under common-law privacy or section 552.1175 of the Government Code. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public

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<sup>1</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). However, we are unable to determine which of the involved parties is the requestor's client. Accordingly, we must rule conditionally. If the requestor is an attorney for the individual whose information we marked, then the department may not withhold the marked information pertaining to that individual from this requestor under section 552.101 on the basis of common-law privacy or under section 552.1175 of the Government Code.

In summary, the department must generally withhold the information we marked under section 552.101 in conjunction with common-law privacy. If the licensed peace officer at issue elects to restrict access to the information in accordance with section 552.1175(b), the department must generally withhold the information we marked under section 552.1175 of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service. However, the department may not withhold from this requestor any information pertaining to an individual who is the requestor's client under section 552.101 and common-law privacy or under section 552.1175 of the Government Code. The department 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,

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/jlbm

Ref: ID# 834143

Enc. Submitted documents

c: Requestor  
(w/o enclosures)