



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 8, 2020

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

OR2020-17029

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# 834724 (ORR# M029970-041620).

The City of Midland (the "city") received a request for information pertaining to a specified incident. The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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 chapter 57B of the Code of Criminal Procedure. Article 57B.02(b) of the Code of Criminal Procedure provides, in relevant part, "[a] victim [of family violence] may choose a pseudonym to be used instead of the victim's name to designate the victim in all public files and records concerning the offense, including police summary reports, press releases, and records of judicial proceedings." Crim. Proc. Code art. 57B.02(b). Article 57B.02(d) provides, in pertinent part, "[a] completed and returned pseudonym form is confidential and may not be disclosed to any person other than a defendant in the case or the defendant's attorney, except on an order of a court of competent jurisdiction. *Id.* art. 57B.02(d). In addition, article 57B.03 provides as follows:

- (a) A public servant with access to the name, address, or telephone number of a victim 17 years of age or older who has chosen a pseudonym under this chapter commits an offense if the public servant knowingly discloses the name, address, or telephone number of the victim to any person who is not

assisting in the investigation or prosecution of the offense or to any person other than the defendant, the defendant's attorney, or the person specified in the order of a court of competent jurisdiction.

Id. art. 57B.03(a). We note the victim at issue in the submitted information elected to be designated by a pseudonym in accordance with chapter 57B of the Code of Criminal Procedure. Accordingly, we find the city must withhold the submitted pseudonym form under section 552.101 of the Government Code in conjunction with article 57B.02(d) of the Code of Criminal Procedure. We note the victim used a pseudonym in some of the submitted information, but the remaining information contains the information pertaining to the victim that falls under article 57B.03. Accordingly, the city must also withhold the name, address, and telephone number of the victim under section 552.101 of the Government Code in conjunction with article 57B.03(a) of the Code of Criminal Procedure. *See* Open Records Decision No. 584 (1991) (statute making release of information criminal offense deems information confidential by law for purposes of section 552.101).

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 the *Industrial Foundation* decision. *Id.* at 683. However, this office has also found the public has a legitimate public interest in the details of a crime. *See* Open Records Decision No. 400 at 4 (1983). *See generally* *Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting "legitimate public interest in facts tending to support an allegation of criminal activity" (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994))). Because the victim has been de-identified pursuant to article 57B.02 of the Code of Criminal Procedure, the privacy interests in that individual's date of birth is sufficiently protected, and the city may not withhold it under common-law privacy. Nevertheless, the city must withhold the date of birth of the offender at issue in the submitted information under section 552.101 in conjunction with common-law privacy. We find none of the remaining information satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the remaining information is not confidential under common-law privacy, and the city may not withhold it under section 552.101 on that ground.

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 personal identification document issued by an agency of this state or another state or country is excepted from public release.¹ *See* Gov't Code § 552.130. The city must withhold the submitted driver's license number and issuing state under section 552.130 of the Government Code.

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

In summary, the city must withhold the following: (1) the submitted pseudonym form under section 552.101 of the Government Code in accordance with article 57B.02(d) of the Code of Criminal Procedure; (2) the name, address, and telephone number of the victim at issue in the submitted information under section 552.101 of the Government Code in conjunction with article 57B.03(a) of the Code of Criminal Procedure; (3) the date of birth of the offender at issue in the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy; and (4) the submitted driver's license number and issuing state 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 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/be

Ref: ID# 834724

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² We note the information at issue contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).