



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 28, 2020

Mr. Anthony J. King
Counsel for the City of Rusk
Law Office of Sinclair & King
P.O. Box 537
Rusk, Texas 75785

OR2020-18690

Dear Mr. King:

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# 842400.

The City of Rusk (the "city"), which you represent, received a request for specified scoring sheets, evaluations, and testing materials. You state the city will release some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 protected by other statutes such as section 143.089 of the Local Government Code. The application of chapter 143 of the Local Government Code is delineated in section 143.002(a) of that code, which provides:

This chapter applies only to a municipality:

(1) that:

(A) has a population of 10, 000 or more;

(B) has a paid fire department or police department; and

(C) has voted to adopt this chapter or the law codified by this chapter; or

(2) whose election to adopt this chapter and whose acts subsequent to that election were validated by the law enacted by House Bill 822, Acts of the 73rd Legislature, Regular Session, 1993.

Local Gov't Code § 143.002(a). Thus, chapter 143 of the Local Government Code applies only to civil service municipalities that have voted to adopt the chapter. Although you assert section 143.089(g) for the submitted information, you have not demonstrated the City of Rusk is a civil service municipality to which chapter 143 is applicable. Therefore, the city may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

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. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101 of the Government Code. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied). (mem. op.). This common-law right to privacy protects the identifying information of a complainant in certain situations based on the facts of the case. *See* Open Records Decision No. 394 (1983); *see also* Open Records Decision No. 339 (1982) (concluding common-law privacy protects identifying information of victim of serious sexual offense).

Upon review, we find some of the submitted information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. In addition, we find the remaining information contains a date of birth. However, we are unable to determine whether the date of birth pertains to an actual, living individual. Therefore, we must rule conditionally. To the extent the date of birth in the remaining information pertains to a real, living individual, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information at issue does not pertain to a real, living individual, the city may not withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code applies to records a governmental body holds in an employment capacity and excepts from public disclosure the current and former

home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under section 552.024 or section 552.1175 of the Government Code.¹ *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure.

Upon review, we find a portion of the remaining information consists of the personal information of peace officers who were employed by the city and the information is held in the employment context. Accordingly, the city must withhold the information we marked under section 552.117(a)(2) of the Government Code.

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 id.* § 552.130. The remaining information contains driver's license information. However, we are unable to determine whether the information at issue pertains to an actual, living individual. Therefore, we must rule conditionally. To the extent the driver's license information in the remaining information pertains to a real, living individual, the city must withhold the driver's license information under section 552.130 of the Government Code. To the extent the information at issue does not pertain to a real, living individual, the city may not withhold this information under section 552.130 of the Government Code.

In summary, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the date of birth in the remaining information pertains to a real, living individual, the city must withhold such information 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)(2) of the Government Code. To the extent the driver's license information in the remaining information pertains to a real, living individual, the city must withhold it under section 552.130 of the Government Code. The city 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

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

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,

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/rm

Ref: ID# 842400

Enc. Submitted documents

c: Requestor
(w/o enclosures)