



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 4, 2020

Ms. Katie Leininger
Assistant City Attorney
City of Pearland
3519 Liberty Drive
Pearland, Texas 77581

OR2020-22507

Dear Ms. Leininger:

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# 843108.

The City of Pearland (the "city") received a request for information related to a specified incident. 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.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request for information because it does not pertain to the specified incident. 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 such information in response to this request.

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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

The submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. In this instance, the submitted information reveals the requestor knows the identity of the individual involved as well as the nature of the information at issue. Therefore, withholding only the individual's identity or certain details of the incident at issue from this requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the city must generally withhold the submitted information in its entirety under section 552.101 in conjunction with common-law privacy. However, we note the requestor is the spouse of the individual whose information is at issue and may be acting as that individual's authorized representative. In that event, the requestor has a right of access to information pertaining to her spouse that would ordinarily be withheld to protect the spouse's privacy interests. *See* Gov't Code § 552.023(a)-(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, we rule conditionally. To the extent the requestor is acting as the authorized representative of her spouse, the city may not withhold information pertaining to her spouse under section 552.101 on this basis. In that instance, the city must release the submitted information. To the extent the requestor is not acting as the authorized representative of her spouse, the city must withhold the submitted information in its entirety under section 552.101 in conjunction with common-law privacy.

To the extent the submitted information is not protected in its entirety under section 552.101 in conjunction with common-law privacy, we note portions of the remaining information are subject to section 552.1175 of the Government Code.¹ 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.

¹ 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, 480 (1987), 470 (1987).

Gov't Code § 552.1175(a)(1), (b). Upon review, we find some of the remaining information contains personal information of a peace officer. Accordingly, the city must withhold the information we indicated under section 552.1175 of the Government Code if the individual elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code. However, if the individual does not elect to restrict access to his information in accordance with section 552.1175(b), the information at issue may not be withheld under section 552.1175 of the Government Code.

In summary, to the extent the requestor is not acting as the authorized representative of her spouse, the city must withhold the submitted information in its entirety under section 552.101 in conjunction with common-law privacy. To the extent the requestor is acting as her spouse's authorized representative, the city must withhold the information we indicated under section 552.1175 of the Government Code and release the remaining responsive 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,

Sean McCormick
Assistant Attorney General
Open Records Division

SMC/gw

Ref: ID# 843108

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² We note the requestor has a right of access to some of the information being released. See Gov't Code § 552.023(a); ORD 481 at 4. 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.