



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 20, 2020

Ms. Marie N. Johnson
Assistant City Attorney
Counsel for the City of Denison
Messer Fort McDonald
6371 Preston Road, Suite 200
Frisco, Texas 75034

OR2020-29146

Dear Ms. Johnson:

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# 855517 (ORR# 090120JT).

The City of Denison (the "city"), which you represent, received a request for information pertaining to a specified incident. The city claims some of 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 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. 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 find some of the submitted information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision.

Accordingly, this information is confidential under common-law privacy. However, the city informs us the requestor may be a parent of one of the children whose information is at issue. Section 552.023 of the Government Code provides a governmental body may not deny access to a person or a person's representative to whom the information relates on the grounds that the information is considered confidential under privacy principles. Gov't Code § 552.023(a); *see* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, if the requestor is a parent of a child whose information is at issue, then the requestor has a right of access to that child's private information pursuant to section 552.023 of the Government Code and the city may not withhold that information pursuant to common-law privacy. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law, unless the requestor has a right of access to that information pursuant to section 552.023 of the Government Code. The remaining information is not confidential under common-law privacy and the city may not withhold it under section 552.101 on that ground. Accordingly, 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 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/jm

Ref: ID# 855517

Enc. Submitted documents

c: Requestor
(w/o enclosures)