KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 1, 2020

Ms. Savannah L. Koehler
Paralegal
The City of New Braunfels
550 Landa Street
New Braunfels, Texas 78130

OR2020-29846

Dear Ms. Koehler:

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# 855880 (ORR # 3678-20).

The City of New Braunfels (the "city") received two requests for information pertaining to a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.[1] We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have only submitted information cellular phone extraction records. To the extent any information responsive to the remaining portions of the requests existed on the date the city received the requests, we assume the city has released it. If the city has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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 of the Government Code encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently, and (2) an individual's

[1] As you acknowledge, the city failed to comply with section 552.301 of the Government Code in requesting a decision from our office; however, section 552.101 of the Government Code can provide compelling reasons to withhold information sufficient to overcome the presumption of openness caused by a failure to comply with section 552.301. *See* Gov't Code §§ 552.301, .302. Accordingly, we will consider your arguments.

interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id*. The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with the constitutional right to privacy.[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,

Matthew Taylor
Assistant Attorney General
Open Records Division

MT/be

Ref: ID# 855880

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

[2] As our ruling is dispositive, we need not consider your remaining argument against disclosure of the submitted information.