



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 15, 2021

Ms. Delietrice Henry
Open Records Assistant
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2020-31088A

Dear Ms. Henry:

This office issued Open Records Letter No. 2020-31088 (2020) on December 11, 2020. Since that time, we have received new information that affects the facts on which that ruling was based. *See* Gov't Code §§ 552.306, .352. Thus, we hereby withdraw the prior ruling. Consequently, this decision serves as the correct ruling and is a substitute for Open Records Letter No. 2020-31088. *See generally id.* § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act")). Your request was assigned ID# 871492 (Ref. No. P011273-100820).

The Plano Police Department (the "department") received a request for information pertaining to a specified incident involving two named individuals. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section 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.

¹ We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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. Upon review, we find the information at issue contains information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, an entire report must be withheld to protect the individual's privacy. In this instance, withholding only identifying information from the requestor would not preserve the victim's common-law right to privacy. Accordingly, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law 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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/gw

Ref: ID# 871492

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² As our ruling is dispositive, we need not address your remaining argument against disclosure of this information. Additionally, as we are able to make this determination, we do not address the applicability of section 1701.661(a) of the Occupations Code to the submitted video recordings. *See generally* Occ. Code § 1701.661(a), (e).