



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 22, 2020

Mr. Gustavo Martinez  
City Attorney  
City of Mission  
1201 East 8th Street  
Mission, Texas 78572

OR2020-32036

Dear Mr. Martinez:

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# 859538 (ORR# 20-0656).

The City of Mission (the "city") received a request for information pertaining to a specified address. The city claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the claimed exceptions 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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entirety of the requested information must be withheld to protect the individual's privacy. Withholding only the identity of the individual whose information is at issue or certain details of incident report number 2018-00013200 from this requestor would not preserve the common-law right of privacy of the individual at issue. Accordingly, to protect the privacy of the individual to whom the information relates, the city must withhold incident report number 2018-00013200 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>1</sup>

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<sup>1</sup> As our ruling is dispositive, we do not address the other arguments of the city to withhold this information.

The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *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.). The requestor has a right of access to her own date of birth pursuant to section 552.023 of the Government Code. *See Gov't Code* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Nevertheless, the city must withhold the remaining date of birth it has marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold incident report number 2018-00013200 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold from the remaining information the date of birth it has marked that does not pertain to the requestor under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release the remaining information.<sup>2</sup>

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/rm

Ref: ID# 859538

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup> Because the requestor has a special right of access to some of the information being released, the city must again seek a decision from this office if it receives another request for the same information from another requestor.