



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 31, 2022

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78207

OR2022-02707

Dear Mr. Kopp:

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# 931122 (ORR Nos. W416750, W416766, and W417826).

The San Antonio Police Department (the "department") received three requests from two different requestors for records related to two specified incidents. We understand the department will redact public citizens' dates of birth pursuant to Open Records Letter No. 2016-08566 (2016).¹ The department claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the department claims and reviewed the submitted information.

Initially, we note report number SAPD21130100 was the subject of a previous request for information from the second requestor, as a result of which this office issued Open Records Letter No. 2021-24773 (2021). In that ruling, we determined the department must withhold report number SAPD21130100 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. We note there is no change in the law, facts, and circumstances on which the previous ruling was based. Accordingly, the department must rely on Open Records Letter No. 2021-24773 as a previous determination and withhold report number SAPD21130100 from both requestors in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous

¹ Open Records Letter No. 2016-08566 authorizes the department to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office. *See* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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. Upon review, we find some of the submitted information, which we marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information we marked within report number SAPD21235480 under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the department has not demonstrated the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold the remaining information the department marked under section 552.101 in conjunction with common-law privacy.

In summary, the department must rely on Open Records Letter No. 2021-24773 as a previous determination and withhold report number SAPD21130100 from both requestors in accordance with that ruling. The department must withhold the information we marked within report number SAPD21235480 under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remainder of report number SAPD21235480 to the first requestor.

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,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jxd

Mr. James Kopp - Page 3

Ref: ID# 931122

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)