



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 22, 2022

Mr. William E. Conrad
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2022-05212

Dear Mr. Conrad:

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# 934276 (LGL 21-161 (WQA 73902)).

The City of Waco (the "city") received a request for any call logs, calls for service, or reports regarding a named individual. We understand the city has redacted motor vehicle record information and social security numbers pursuant to section 552.130(c) and 552.147(b) of the Government Code, respectively.¹ You claim some of the remaining information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of the information at issue may implicate the interests of the Federal Bureau of Investigation (the "FBI"). Accordingly, you state, and provide documentation showing, the city notified the FBI of the request for information. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). As of the date of this letter, we have not received any comments from the FBI. We have considered the exception you claim 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." *Id.* §

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See id.* § 552.147(b).

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *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.). Upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the information we marked for release, the city must withhold the information you marked, and the additional information we marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, the city has failed to demonstrate the information we have marked for release is highly intimate or embarrassing and of no legitimate public interest. Thus, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. 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,

Sean Nottingham
Assistant Attorney General
Open Records Division

SN/jm

Ref: ID# 934276

Enc. Submitted documents

c: Requestor
(w/o enclosures)