



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 22, 2022

Ms. Angelie Thomas
Assistant City Attorney
City of Sugar Land
P.O. Box 110
Sugar Land, Texas 77487-0110

OR2022-05294

Dear Ms. Thomas:

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# 932303 (ORR# W013177).

The City of Sugar Land (the "city") received a request for all incident reports involving a named individual and a specified type of incident during a specified time period, including information related to two specified incidents. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. 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." Gov't Code § 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. *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. This office has also concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). The 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 portions

of the submitted information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note the requestor may be acting as the authorized representative of the individual whose information is at issue and may have a right of access to information related to this individual under section 552.023 of the Government Code. *See Gov't Code* § 552.023(a) (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, to the extent the requestor is not acting as the named individual's authorized representative, the city must withhold this individual's date of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. Conversely, to the extent the requestor is acting as the named individual's authorized representative, the city may not withhold the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the city may not withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions to disclosure, the city must release the remaining information to this requestor.¹

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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/be

¹ We note the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. *See Gov't Code* § 552.023(a); ORD 481 at 4. If the city receives another request for this information from an individual without such a right of access, then we note section 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 553.130(e). *See id.* § 552.130(d), (e).

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Enc. Submitted documents

c: Requestor
(w/o enclosures)