



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

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Ms. Stacie S. White
Counsel for the City of Weatherford
Taylor, Olson Adkins, Sralla & Elam, L.L.P.
6000 Western, Place, Suite 200
Fort Worth, Texas 76107

OR2022-22557

Dear Ms. White:

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# 962775 (Reference No. W003445).

The City of Weatherford (the "city"), which you represent, received a request for information related to two specified incidents involving a named individual. The city states it is releasing some of the requested information. The city claims portions of the submitted information are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the city claims and reviewed the submitted information.

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. In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No. 393 at 2 (1983); *see*

Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identities of witnesses to and victims of sexual harassment are highly intimate or embarrassing information and public does not have legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

Upon review, the requestor in this case knows the identity of the alleged victim. We believe that, in this instance, withholding only the victim's identifying information from the requestor would not preserve the victim's common-law right to privacy. However, the requestor is the spouse of the individual whose privacy interests are at issue. Thus, the requestor may be the authorized representative of that individual and may have a right of access to information pertaining to the individual that would otherwise be confidential under common-law privacy. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is 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). Accordingly, if the requestor is not acting as the authorized representative of his spouse, then the city must withhold the entirety of incident report P210001153 under section 552.101 in conjunction with common-law privacy. However, if the requestor is acting as the authorized representative of his spouse, then the city may not withhold incident report P210001153 in its entirety under section 552.101 on the basis of common-law privacy. If requestor is the authorized representative of his spouse, we will address your argument under section 552.108(a)(2) of the Government Code for the information at issue.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The city states the information it marked relates to a closed criminal investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the information it marked.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the city may withhold the information it marked under section 552.108(a)(2) of the Government Code.

As noted above, section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found.* at 685. Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. 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.). As noted above, the requestor may be acting as the authorized representative of his spouse. *See Gov't Code* § 552.023(a). Thus, if the requestor is acting as the authorized representative of his spouse, then the requestor has a right of access to his spouse's date of birth, and it may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is not acting as his spouse representative, then the requestor does not have a right of access to his spouse's date of birth, and it must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Nevertheless, the city must withhold all other public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

The city states it is withholding motor vehicle information pursuant to section 552.130(c) of the Government Code.¹ Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See Gov't Code* § 552.130. We note section 552.130 protects privacy interests. Some of the information at issue may pertain to the requestor or his spouse. The requestor has a right of access to his own motor vehicle record information under section 552.023 of the Government Code, and it may not be withheld under section 552.130 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Further, the requestor may be the authorized representative of his spouse. As such, if the requestor is acting as the authorized representative of his spouse, he also has a right of access to his and his spouse's motor vehicle record information, and it may not be withheld under section 552.130 of the Government Code. If the requestor is not acting as the authorized representative of his spouse, the city must withhold the marked motor vehicle record information not belonging to the requestor under section 552.130 of the Government Code.

In summary, if the requestor is not acting as the authorized representative of his spouse, then the city: (1) must withhold the entirety of incident report P210001153 under section 552.101 of the Government Code in conjunction with common-law privacy; (2) must withhold the marked dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy; (3) must withhold the marked motor vehicle information not belonging to the requestor under section 552.130 of the Government Code; and (4) must release the remaining information. To the extent the requestor is acting as the authorized representative of his spouse, then the city: (1) with the exception of basic information, may withhold the information it marked under section 552.108(a)(2) of the Government Code; (2) with the exception of the requestor's spouse's date of birth, must

¹ 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 552.130(e). *See id.* § 552.130(d), (e).

withhold the remaining marked date of birth under section 552.101 of the Government Code in conjunction with common-law privacy; (3) with the exception of the requestor's and his spouse's motor vehicle record information, must withhold the marked motor vehicle record information under section 552.130 of the Government Code; and (4) 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,

Cesar Mata
Attorney
Open Records Division

CM/mo

Ref: ID# 962775

Enc. Submitted documents

c: Requestor
(w/o enclosures)