



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 30, 2022

Ms. Stephanie Berry
Assistant City Attorney
City of Denton
215 East McKinney Street
Denton, Texas 76201

OR2022-26308

Dear Ms. Berry:

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# 969095 (ORR# R000896).

The City of Denton (the "city") received a request for a specified incident report. The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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 the *Industrial Foundation* decision. *Id.* at 683. 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.). Generally, only highly intimate information that implicates the privacy of an

individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entirety of the information must be withheld to protect the individual's privacy.

The city argues the submitted information must be withheld in its entirety on the basis of common-law privacy. However, the city has not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the submitted information must be withheld on that ground. Nevertheless, the city must withhold the submitted dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. We find some of the remaining information, which we have marked, also satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the city must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information is not confidential under common-law privacy, and the city may not withhold it under section 552.101 on that ground.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).¹ See Gov't Code § 552.137(a)-(c). The remaining information contains e-mail addresses of members of the public that do not appear to be of a type specifically excluded by section 552.137(c), and the city does not inform us a member of the public has affirmatively consented to their release. Therefore, the city must withhold the e-mail addresses of members of the public in the remaining information under section 552.137 of the Government Code.

In summary, the city must withhold the submitted dates of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold the e-mail addresses of members of the public in the remaining information under section 552.137 of the Government Code. 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

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

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/eb

Ref: ID# 969095

Enc. Submitted documents

c: Requestor
(w/o enclosures)