



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 1, 2022

Ms. Jacqueline Villarreal
Assistant District Attorney
Hidalgo County District Attorney's Office
100 East Cano Street
Edinburg, Texas 78539

OR2022-26644

Dear Ms. Villarreal:

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# 970143 (ORR# 2022-0118).

The Hidalgo County Open Government Division (the "county") received a request for information pertaining to a specified incident. The county 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. 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 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.). The requestor has a right of access to her own date of birth pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) ("[a] person or a person's authorized representative has a special right of access, beyond the right of the general

public, to information held by a governmental body that relates to the 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 individuals request information concerning themselves). Nevertheless, the county must withhold the submitted date of birth that does not pertain to the requestor under section 552.101 of the Government Code in conjunction with common-law privacy. The county must release the remaining information.¹

Finally, the county asks this office to issue a previous determination permitting it 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* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). However, we decline to do so at this time. Accordingly, this letter ruling is limited to the particular records 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 records 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jm

Ref: ID# 970143

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹ Because the requestor has a special right of access to some of the information being released, the county must again seek a decision from this office if it receives a request for the same information from another requestor.