



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 19, 2022

Ms. Debra A. Anderson
Public Information Coordinator
Hays County
111 East San Antonio Street, Suite 202
San Marcos, Texas 78666

OR2022-28628

Dear Ms. Anderson

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# 973331 (ORR# R002194).

Hays County (the "county") received a request for information pertaining to a specified incident. The county states it has released some of the requested information, but claims the submitted information is excepted from disclosure under sections 552.101 and 552.152 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.¹

Section 552.152 of the Government Code provides the following:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

¹ We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Gov't Code § 552.152. Upon review, we find the county has failed to demonstrated release of any of the information at issue would subject an employee or officer of the county to a substantial threat of physical harm. Therefore, the county may not withhold any of the submitted information under section 552.152 of the Government Code.

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.* § 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. 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. *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 his 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 do not pertain to the requestor under section 552.101 of the Government Code in conjunction with common-law privacy. We also find the submitted recording and some of the remaining information, which we have marked, satisfy the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the county must also withhold the submitted recording in its entirety and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining information is not confidential under common-law privacy, and the county may not withhold it under section 552.101 on that ground. Therefore, the county 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jxd

Ref: ID# 973331

Enc. Submitted documents

c: Requestor
(w/o enclosures)