



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 5, 2022

Ms. Karen Horner
City Attorney
City of Friendswood
910 South Friendswood Drive
Friendswood, Texas 77546

OR2022-30674

Dear Ms. Horner:

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# 976338 (Ref. No. W015041-071822).

The City of Friendswood (the "city") received a request for a specified police report. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). You assert, and submit an affidavit from the deputy chief of police confirming, the submitted information pertains to a case that concluded in a result other than conviction or deferred adjudication. Based on your representations and our review, we agree section 552.108(a)(2) is applicable to the submitted information. Thus, the city may withhold the information you have highlighted within the submitted information under section 552.108(a)(2) of the Government Code.¹

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

¹ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

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. 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.). The city must withhold the public citizen's date of birth you have highlighted in the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city may withhold the information you have highlighted under section 552.108(a)(2) of the Government Code. The city must withhold the public citizen's date of birth you have highlighted under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release the remaining information.²

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,

Michael Pearle
Attorney
Open Records Division

MAP/jxd

Ref: ID# 976338

Enc. Submitted documents

c: Requestor
(w/o enclosures)⁴

² We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the city receives another request for the same information from a different requestor, the city must again seek a decision from this office.