



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 8, 2022

Ms. Charla Thomas  
Assistant City Attorney  
City of Temple  
2 North Main Street, Suite 308  
Temple, Texas 76501

OR2022-38100

Dear Ms. Thomas:

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# 988854 (ORR# 22-2722).

The City of Temple (the "city") received a request for records related to three specified incidents. The city claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the city claims and reviewed the submitted information.

Initially, we note the city has not submitted information related to two of the specified incidents. To the extent any information responsive to these portions of the request existed on the date the city received the request, we assume the city has released it. If the city has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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. 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.). Upon review, we find some of the submitted information, which the city marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the information it marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. 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 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,

Kelly McWethy  
Assistant Attorney General  
Open Records Division

KM/pt

Ref: ID# 988854

Enc. Submitted documents

c: Requestor  
(w/o enclosures)