



THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS

July 20, 2023

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

OR2023-24122

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# 070999 (Request #23-1333).

The City of Temple (the "city") received a request for information pertaining to two named individuals during a defined period of time.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim 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 *Industrial Foundation*. *Id.* at

¹ You state the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.2d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

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.).

Upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the public citizen's date of birth and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public interest. Thus, the city may not withhold the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.² Gov't Code § 552.1175. Section 552.1175 applies, in part, to "current or former juvenile probation and detention officers certified by the Texas Juvenile Justice Department[.]" *Id.* § 552.1175(a)(10). For purposes of section 552.1175, "family member" means a spouse, minor child, or adult child who resides in the person's home. *Cf. id.* § 552.117(c) ("family member" has meaning assigned by Fin. Code § 31.006(d)). Some of the remaining information pertains to an individual who may be subject to section 552.1175. Accordingly, to the extent the information we marked relates to an individual who is subject to section 552.1175(a)(10) of the Government Code who elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, the city must withhold such information under section 552.1175 of the Government Code. Conversely, if the individual is either not subject to section 552.1175(a)(10) or does not elect to restrict access to the information in accordance with section 552.1175(b), then the city may not withhold this information under section 552.1175.

In summary, the city must withhold the public citizen's date of birth and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information we marked relates to an individual who is subject to section 552.1175(a)(10) of the Government Code who elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, the city must withhold such information under section 552.1175 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.

² The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/mo

Ref: ID# 070999

Enc. Submitted documents

c: Requestor
(w/o enclosures)