



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 3, 2015

Mr. Galen Gatten
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2015-10872

Dear Mr. Gatten:

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# 565839 (Request Nos. W041385, W041386, W041469).

The City of Fort Worth (the "city") received three requests from two requestors for information pertaining to a specified incident involving a named individual. You state the city has released some information to the requestors. We understand the city has redacted motor vehicle record information pursuant to section 552.130(c) of the Government Code and social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception you claim and reviewed the

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(a), (c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

²We note one of the requestors asserts the city failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(d)(1) (requiring governmental body to provide requestor written statement the governmental body has asked for an attorney general decision), (e) (requiring governmental body to submit within fifteen business days of receiving request for information copy of request for information). Even if the requestor is correct, however, section 552.101 is a mandatory exception to disclosure that constitutes a compelling reason sufficient to overcome the presumption of openness caused by the failure to comply with section 552.301. *See id.* §§ 552.007, .302. Therefore, we will address the applicability of this exception to the submitted information.

submitted information. We have also received and considered comments from one of the requestors. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

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 if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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.

In Open Records Decision No. 393 (1983), this office concluded that, generally, only information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

The submitted information pertains to an alleged sex-related offense. We note the first requestor knows the identity of the alleged victim at issue in the submitted information. We believe, in this instance, withholding only identifying information from the first requestor would not preserve the alleged victim's common-law right to privacy. Therefore, the city must withhold the submitted information in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. However, there is no indication the second requestor knows the identity of the alleged victim. Thus, the city may not withhold the submitted information in its entirety from the second requestor under section 552.101 of the Government Code on that basis. Upon review, however, we find the identifying information of the alleged victim in the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the alleged victim's identifying information throughout the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions to disclosure, the city must release the remaining information to the second requestor.

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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kenny Moreland', written in a cursive style.

Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/dls

Ref: ID# 565839

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)