



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 9, 2015

Ms. Crystal Koonce
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2015-23538

Dear Ms. Koonce:

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# 586429.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for information concerning a specified report. 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: (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. *See 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 established. *See id.* at 681–82. The types of information considered highly intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has concluded some kinds of medical information are highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Typically, only highly intimate or embarrassing information implicating the privacy of an individual is withheld from disclosure. However, in certain situations where the requestor knows the

identity of the individual involved, as well as the nature of certain incidents, an entire report must be withheld to protect the individual's privacy. Upon review, we find this is not a situation in which the entire report must be withheld in order to protect an individual's privacy. Accordingly, the sheriff's office may not withhold the entire report under section 552.101 of the Government Code in conjunction with common-law privacy. Nonetheless, some of the information within the report, which we marked, meets the standard articulated in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the remaining information contains dates of birth of members of the public. In considering whether a member of the public's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *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 supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.¹ *Tex. Comptroller*, 354 S.W.3d at 347–48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to member of the public, and thus, their dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. Accordingly, the sheriff's office must withhold all dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the sheriff's office must withhold the information we marked and the dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office 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 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

¹Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

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 "Neal Falgoust", written over the word "Sincerely,".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/eb

Ref: ID# 586429

Enc. Submitted documents

c: Requestor
(w/o enclosures)