



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 31, 2016

Ms. Victoria D. Honey and Mr. Richard A. McCracken
Assistant City Attorneys
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2016-12352

Dear Ms. Honey and Mr. McCracken:

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# 612045 (Fort Worth PIR Nos. W050100 and W050603).

The Fort Worth Police Department (the "department") received two requests from the same requestor for information pertaining to a specified location and address for a specified time period.¹ You state the department has released some of the requested information. We understand you will withhold information pursuant to sections 552.130(c) and 552.147(b) of the Government Code.² Further, we understand you will withhold information pursuant to the previous determinations issued in Open Records Letter Nos. 2013-22304 (2013) and

¹You state, and submit documentation showing, the requestor narrowed his second request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(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).

2016-00620 (2016).³ 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.

Initially, you state, and we agree, Exhibit E was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-24649 (2015). In that ruling, we determined, with the exception of the basic information, which must be released, the City of Fort Worth may withhold the information at issue under section 552.108(a)(1) of the Government Code. There is no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, with regard to Exhibit E, the department may continue to rely on Open Records Letter No. 2015-24649 as a previous determination and withhold or release that information in accordance with that ruling.⁴ *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, the remaining information you have submitted was not at issue in the previous ruling. Accordingly, we will address your argument against disclosure of this 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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987).

Upon review, we find portions of the information in Exhibit C satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we find you have failed

³Open Records Letter No. 2013-22304 is a previous determination issued to the City of Fort Worth authorizing it to withhold Federal Bureau of Investigation numbers under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code without requesting a decision from this office. Open Records Letter No. 2016-00620 is a previous determination issued to the City of Fort Worth authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

⁴As we are able to make this determination, we need not address your argument against disclosure of Exhibit E.

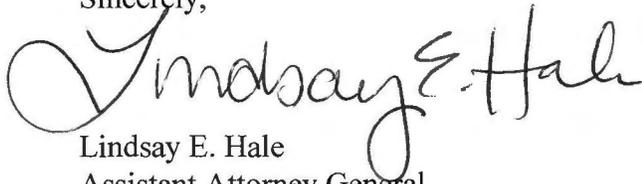
to demonstrate some of the information you have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not withhold this information, which we have marked for release, under section 552.101 in conjunction with common-law privacy. Accordingly, with the exception of the information we have marked for release, the department must withhold the information you have marked and the additional information we have marked for withholding under section 552.101 in conjunction with common-law privacy.

In summary, the department may continue to rely on Open Records Letter No. 2015-24649 as a previous determination and withhold or release Exhibit E in accordance with that ruling. With the exception of the information we have marked for release, the department must withhold the information you have marked and the additional information we have marked for withholding in Exhibit C under section 552.101 of the Government Code in conjunction with common-law privacy. The department 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 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 cursive script that reads "Lindsay E. Hale". The signature is written in black ink and is positioned above the typed name and title.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/sdk

Ref: ID# 612045

Enc. Submitted documents

c: Requestor
(w/o enclosures)