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1. Article Addressed to:

**Honorable Ken Paxton
Attorney General
Open Records Division
Austin, TX 78711-2548**



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2. Article Number (Transfer from service label)

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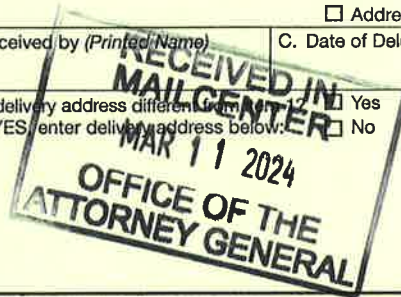
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COPY
mailed 2-6-24

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March 4, 2024

Honorable Ken Paxton
Attorney General
Open Records Division
Austin, TX 78711-2548

VIA CERTIFIED MAIL,
RETURN RECEIPT REQUESTED
7019 0140 0001 1146 0131

Re: *Public Information Request from Robert Montoya received by the City of McLendon-Chisholm on February 29, 2024*

Dear Attorney General Paxton:

I am the City Attorney for the City of McLendon-Chisholm, Texas (the "City"). Enclosed and marked as **Exhibit A** is a request for information from Robert Montoya received by the City on February 29, 2024.

Pursuant to Section 552.101 of the Public Information Act ("Act"), the City requests a determination regarding whether the requested information falls within an exception to disclosure. In particular, the City believes the requested information must be withheld under Section 552.101 of the Act.

Section 552.101: Common Law Privacy

Section 552.101 also 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

The types of information considered intimate or embarrassing by the Texas Supreme Court included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Your office has found the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, see Open Records Decision

Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and personal financial information not relating to the financial transaction between an individual and a governmental body, see Open Records Decision Nos. 600 (1992), 545 (1990). Some of the submitted information is highly intimate or embarrassing and is not of legitimate concern to the public. Therefore, the city must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy. Consequently, the included offense report would be excepted under this section pursuant to section 552.101 and section 552.102.

Councilmember McNeal has transacted no business with the City. There is no connection or relationship financially between the City and Councilmember McNeal. Consequently, the request constitutes a clearly unwarranted invasion of personal privacy." § 552.102(a). Common-law privacy 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976); see also Open Records Decision No. 545 at 3-5 (1990). Therefore, the doctrine of common-law privacy generally excepts such financial information from required public disclosure. See Open Records Decision Nos. 523 at 3-4 (1989) (credit reports and financial statements of individual veterans participating in Veterans Land Program are protected from disclosure as "background" financial information), 373 at 3 (1983) (sources of income, salary, mortgage payments, assets, and credit history of applicant for housing rehabilitation grant are protected by common-law privacy).

Further, the City contends some of the information in the complaints is subject to the constitutional right to privacy, which is also encompassed by section 552.101 of the Government Code. Constitutional privacy protects two kinds of interests (only one of which is relevant here). See *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the "zones of privacy," pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. See *Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981). The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. See *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985). This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492). Other than things like marriage, family relationships, etc, there are fewer "intimate aspects of human affairs" than one's financial status.

Therefore, the City requests a ruling that a portion of the submitted responsive information, marked accordingly, must be withheld in its entirety under Section 552.101 and Section 552.102 of the Act.

The requestor has been notified by copy of this letter that the City is seeking a determination regarding whether the submitted responsive information falls within an exception to disclosure. The City will release the remaining portions of the responsive information not subject to this request for a determination at this time. Please do not hesitate to contact me should you have any questions or comments.

Sincerely,

/s/ Michael B. Halla

Enclosures

cc (w/ enclosures):

Shelly Green, City Secretary

cc (w/o enclosures):

Robert Montoya, Requestor *via email*: rmontoya@texasscorecard.com



RECEIVED

2-29-2024

TEXAS SCORECARD

REAL NEWS  FOR REAL TEXANS

February 29, 2024

From:
Texas Scorecard

To:
City of McLendon-Chisholm

This letter ("Document Request") shall serve as a public information request under the Texas Public Information Act, Tex. Gov't Code §552.001 et seq., for copies of records in their *original (electronic/paper) format*. We agree to mandatory redactions. We do not agree to discretionary exceptions.

REQUESTED RECORDS:

From January 1, 2022 to the date a search is conducted,

- The Personal Financial Statements and Campaign Finance Reports of Bryan McNeal.

We request a waiver of all fees as we are a 501(c)3 non-profit news media organization, and the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of **City of McLendon-Chisholm**. This information is not being sought for commercial purposes.

The Texas Public Information Act requires that you "promptly produce" the requested records unless, within 10 days, you have sought an Attorney General's Opinion. If you expect a significant delay in responding to this request, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

I appreciate your prompt attention to this matter. Please feel free to contact me with any questions.

Sincerely,
Robert Montoya
Investigative Reporter



7019 0140 0001 1146 0025

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City, State	Austin, Texas 78711-2548	

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

March 1, 2024

Via Certified Mail, 7019 0140 0001 1146 0025

Office of the Attorney General
Attention Opinion Committee
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Re: Public Information Act Request Dated February 29, 2024
PIA Requestor: Robert Montoya, Investigative Reporter
rmontoya@texasscorecard.com
Responding Party: City of McLendon-Chisholm

Dear Sir/Madame:

On February 29, 2024, the City of McLendon-Chisholm received a request from Robert Montoya for information related to a current City Council Member. The request is for personal financial statements from January 1, 2022 to the date a search is conducted.

It has been determined that personal financial statements are not subject to disclosure.

Therefore, we are requesting an opinion as to whether we are required to request these documents and provide to the requestor. A copy of the PIR is attached for your review.

Respectfully submitted,

Rochelle Green, City Secretary
City of McLendon-Chisholm, Texas

Cc: Robert Montoya, Investigative Report
Texas Scorecard

The UPS Store #7205
457 Laurence Dr
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Terminal.....: POST205A Date.: 3/1/2024
Employee.....: 104420 Time.: 02:40 PM
Cashier's Name Van

ITEM NAME	QTY	PRICE	TOTAL
Metered Mail Ground Advantage	1 @	\$14.48	\$14.48
Tax			\$0.00
MMSKSDXRZDP96			
Tracking Number			

Subtotal \$14.48
Shipping/Other Charges \$0.00
Total tax \$0.00
Total \$14.48

Cards \$14.48

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