



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 17, 2015

Ms. Alexis G. Allen  
Counsel for City of Lancaster  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Ross Tower  
500 North Akard Street  
Dallas, Texas 75201

OR2015-26628

Dear Ms. Allen:

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# 592564.

The Lancaster Police Department (the "department"), which you represent, received a request for information concerning a specified incident. The department released information responsive to the request but redacted motor vehicle record information as permitted by sections 552.130 of the Government Code and an insurance policy number as permitted by section 552.136 of the Government Code without requesting a decision from this office.<sup>1</sup>

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<sup>1</sup>The department notified the requestor the redactions were made pursuant to Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold certain categories of information without requesting an attorney general decision. However, the Texas Legislature amended sections 552.130 and 552.136 to allow a governmental body to redact information described in sections 552.130(a) and 552.136(b) without a ruling from this office. *See* Gov't Code §§ 552.130(c), .136(c). If a governmental body redacts such information, it must notify the requestor of his right to appeal the redactions in accordance with sections 552.130(e) and 552.136(c). *See id.* §§ 552.130(e), .136(e). Open Records Decision No. 684 does not permit the requestor to appeal such redactions. Thus, the statutory amendments to sections 552.130 and 552.136 of the Government Code supercede Open Records Decision No. 684, and a governmental body may redact information subject to sections 552.130(a) and 552.136(b) in accordance with sections 552.130(c) and 552.136(c), not Open Records Decision No. 684.

*See* Gov't Code §§ 552.130(c), .136(c). Pursuant to sections 552.130(d) and 552.136(d), the requestor has asked this office to review the information and render a decision as to whether it is excepted from disclosure under sections 552.130(a) and 552.136(b) of the Government Code. *See id.* §§ 552.130(d), .136(d). We have considered the department's position and reviewed the information.

Initially, we note the department also redacted information it believed was subject to section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code without requesting a decision from this office. You do not assert, nor does a review of our records indicate, the department is authorized to withhold that information without seeking a ruling from this office. *See id.* § 552.301; Open Records Decision No. 673 (2001). Accordingly, the department was required to seek a ruling to withhold that information. The department acknowledges it did not meet the procedural deadlines under section 552.301(b) of the Government Code in asking this office for a ruling. *See* Gov't Code § 552.301(b). Nonetheless, section 552.101 provides a compelling reason to withhold information from disclosure, so we will consider the applicability of this exception to the information at issue. *See id.* § 552.302.

The department claims section 552.101 of the Government Code in conjunction with section 730.004 of the Transportation Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses section 730.004 of the Transportation Code, which provides "an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record." Transp. Code § 730.004. "Personal information" includes a person's name, address, and driver identification number, but not the zip code. *Id.* § 730.003(6). The Department of Public Safety ("DPS") is an "agency" for purposes of chapter 730. *See id.* § 730.003(1) ("agency" is state agency that compiles or maintains motor vehicle records). You state the information you marked was obtained by the department from DPS. *See id.* § 730.007(a)(2)(A)(i) (personal information may be disclosed to government agency in carrying out its functions). An authorized recipient of personal information may not re-disclose the personal information, and to do so is a misdemeanor offense. *Id.* § 730.013(a), (d). Accordingly, the department must withhold the personal information we marked under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code. However, no portion of the remaining information at issue consists of personal information about any person obtained by the department in connection with a motor vehicle record. Accordingly, the department may not withhold the remaining information under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit and a motor vehicle title or registration issued by an agency of this state or another state or country. Gov't Code

§ 552.130(a)(1)–(2). Accordingly, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The remaining information is not subject to section 552.130, and the department may not withhold it on that basis.

Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, the department must withhold the insurance policy number we marked under section 552.136 of the Government Code.

Section 552.101 of the Government Code also encompasses 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. *See id.* at 681–82. The types of information considered 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 generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office also has concluded personal financial information not relating to the financial transaction between an individual and a governmental body are protected by common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department 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 the date of birth of a member of the public 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.<sup>2</sup> *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 members of the public, and thus, dates of birth of members of the public are also protected by common-law privacy

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<sup>2</sup>Section 552.102(a) exempts 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).

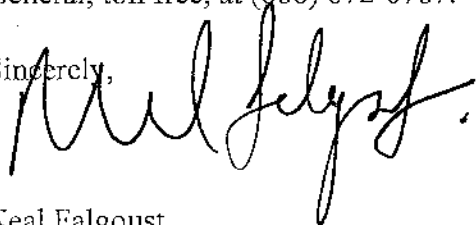
pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at \*3. Accordingly, the department must withhold all dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information is not highly intimate or embarrassing so the department may not withhold it under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold the personal information we marked under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code. The department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code and the insurance policy number we marked under section 552.136 of the Government Code. The department must withhold the information we marked and dates of birth of members of the public 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](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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/bw

Ref: ID# 592564

Enc. Submitted documents

c: Requestor  
(w/o enclosures)