



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 29, 2016

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

OR2016-19511

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# 626289 (Ref. No. 77741).

The Lancaster Police Department (the "department"), which you represent, received a request for information pertaining to a specified motor vehicle accident involving the requestor's client. You state the department has no information responsive to a portion of the request.¹ You state the department will release some responsive information, including the CR-3 accident report form. *See* Transp. Code § 550.065(c) (providing for release of accident report to person or entity listed under this subsection). You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ diss'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a). However, we note the requestor has a right of access to his client's motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a) ("person or a person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). The submitted information, including the submitted video recording, contains motor vehicle record information not belonging to the requestor's client that is subject to section 552.130. You state the department lacks the technical capability to redact the information subject to section 552.130 from the video recordings. Based on this representation, we find the department must withhold the information we have marked, as well as the submitted video recording in its entirety, under section 552.130 of the Government Code.²

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 information protected by other statutes, such as 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, but not the zip code, and medical information. *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 some of the remaining information 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). You state the requestor has not demonstrated he has obtained the written consent of anyone whose information is at issue, except for his client. *See id.* § 730.006 (personal information obtained by agency in connection with motor vehicle record shall be disclosed to requestor who demonstrates requestor has obtained the written consent of person who is the subject of the information) Accordingly, except for the requestor's client, we find the department must withhold the names, addresses, but not the zip codes, and medical information of the individuals at issue in the remaining information the department received from DPS under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code.

²As our ruling is dispositive, we do not address your other argument to withhold this information.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. In considering whether a public citizen'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.³ *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 public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. Upon review, we find the remaining information pertains to individuals who have been de-identified and whose privacy interests are thus protected, or to the requestor's client. *See* Gov't Code § 552.023(b); ORD 481 at 4. Therefore, the department may not withhold any of the remaining information under section 552.101 of the Government Code on this basis.

We note some of the remaining information is subject to section 552.136 of the Government Code.⁴ Section 552.136 of the Government Code states "Notwithstanding 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." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Upon review, we find the department must withhold the information we have marked under section 552.136 of the Government Code.

In summary, the department must withhold the information we have marked, as well as the submitted video recording in its entirety, under section 552.130 of the Government Code. Except for the requestor's client, we find the department must withhold the names, addresses, but not the zip codes, and medical information of the individuals at issue in the remaining information the department received from DPS under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code. The

³Section 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).

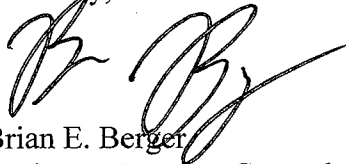
⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

department must withhold the information we have marked under section 552.136 of the Government Code. The remaining information must be released.⁵

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 'B. Berger', is written over the typed name.

Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 626289

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵We note the requestor has a special right of access to some of his information being released. *See* Gov't Code § 552.023(b); Transp. Code § 730.006; ORD 481 at 4. Thus, if the department receives another request for this information from a different requestor, then the department must again seek a decision from this office.