



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 28, 2016

Mr. Nick Lealos
Assistant General Counsel
Texas Department of Public Safety
P. O. Box 4087
Austin, Texas 78773-0001

OR2016-26293

Dear Mr. Lealos:

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# 635679 (PIR # 16-5367).

The Texas Department of Public Safety (the "department") received a request for specified dash camera video footage, a specified citation, and certain log information. You have released some information to the requestor. You state you will redact information under section 552.130(c) of the Government Code.¹ You also state you will redact the dates of birth of living individuals pursuant to a previous determination issued in Open Records Letter No. 2015-27249 (2015).² You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.

¹We note section 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).

²Open Records Letter No. 2015-27249 authorizes the department to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting a decision from the attorney general.

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 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).

In this instance, you seek to withhold portions of the submitted information under section 552.101 in conjunction with common-law privacy. Upon review, we find portions of the submitted information, which we indicated, are highly intimate or embarrassing and not of legitimate public concern. Thus, the information we indicated must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the department has failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the department may not withhold the remaining information under section 552.101 in conjunction with common-law privacy.

Some of the remaining information may be subject to section 552.1175 of the Government Code.³ Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Gov't Code § 552.1175(a)(1), (b). Some of the remaining information, which we indicated, relates to an officer of the department but the information is not held by the department in an employment capacity, as well as another individual who may be a licensed peace officer. Accordingly, to the extent the information we indicated pertains to licensed peace officers who elect to restrict access to the information in accordance with section 552.1175(b), the department must withhold the information we indicated under section 552.1175 of the Government Code. Conversely, if the individuals at issue are not licensed peace officers or do not elect to restrict access to the information in accordance with section 552.1175(b), the information we indicated may not be withheld under section 552.1175.

In summary, the department must withhold the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information we indicated pertains to licensed peace officers who elect to restrict access to the information in accordance with section 552.1175(b), the department must withhold the information we indicated under section 552.1175 of the Government Code. The remaining information must be released.⁴

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,



Kaelan A. Henze
Assistant Attorney General
Open Records Division

KAH/eb

⁴The remaining information contains social security numbers. Section 552.147 of the Government Code authorizes a governmental body to redact the social security number of a living person without requesting a decision from this office. See Gov't Code § 552.147(b).

Ref: ID# 635679

Enc. Submitted documents

c: Requestor
(w/o enclosures)