



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 5, 2017

Ms. Akilah Mance  
Counsel for the City of Stafford  
Olson & Olson LLP  
2727 Allen Parkway, Suite 600  
Houston, Texas 77019-2133

OR2017-00363

Dear Ms. Mance:

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# 640919 (Reference No. COS16-112).

The Stafford Police Department (the "department"), which you represent, received a request for information pertaining to a specified incident. You state the department has released some information to the requestor. You state the department will redact information pursuant to section 552.147(b) of the Government Code and pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 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

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<sup>1</sup>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 Gov't Code § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

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 also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992) (personal financial information includes choice of particular insurance carrier), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information).

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.<sup>2</sup> *Texas 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. We note the requestor has a right of access to her private information and date of birth pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, with the exception of the requestor's date of birth, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we conclude some of the information you have marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, the requestor has a right of access to some of the information at issue, which we have marked for release, under section 552.023 of the Government Code, and it may not be withheld from her on the basis of common-law privacy. Further, we find you have not demonstrated any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department may not withhold any portion of the remaining information under section 552.101 in conjunction with 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).

You state the department will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code.<sup>3</sup> *See* Gov't Code § 552.130(c). We note some of the information you have redacted under section 552.130(c) of the Government Code belongs to the requestor. Further, we note section 552.130 protects personal privacy. Thus, the requestor has a right of access to her own motor vehicle record information under section 552.023. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, the department may not withhold the requestor's motor vehicle record information from her under section 552.130. Upon review, we note the submitted information contains additional information subject to section 552.130. Therefore, with the exception of the requestor's motor vehicle record information, the department must withhold the information you have marked and the additional information we have marked pursuant to section 552.130 of the Government Code.

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.”<sup>4</sup> Gov't Code § 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. However, the purpose of section 552.136 is to protect the privacy interests of individuals. Thus, as previously noted, the requestor has a right of access to her insurance policy number under section 552.023 of the Government Code and it may not be withheld from her under section 552.136. *See id.* § 552.023(a); ORD 481 at 4. Therefore, the department must withhold the insurance policy number we have marked under section 552.136 of the Government Code.

In summary, except for the information we have marked for release and the requestor's date of birth, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the requestor's motor vehicle record information, which must be released, the department must withhold the information you have marked and the additional information we have marked pursuant to section 552.130 of the Government Code. The department must

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<sup>3</sup>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).

<sup>4</sup>The 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).

withhold the insurance policy number we have marked under section 552.136 of the Government Code. The department must release the remaining information.<sup>5</sup>

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,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/akg

Ref: ID# 640919

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>5</sup> We note that because the requestor has a special right of access to some of the information being released in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.