



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 7, 2017

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

OR2017-04859

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# 648298 (Ref No. 82397).

The Lancaster Police Department (the "department"), which you represent, received three requests from the same requestor for information pertaining to three specified incidents. You state you have released some of the requested information. 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 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 because section 552.130 is designed to protect the privacy of individuals, 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 recordings, 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. Thus, the department must withhold the information we have marked, as well as the submitted video recordings in their entirety, under section 552.130 of the Government Code.¹ See Open Records Decision No. 364 (1983).

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, telephone number, 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 an agency in connection with a motor vehicle record shall be disclosed to a requestor who demonstrates that the requestor has obtained the written consent of the person who is the subject of the information.). Accordingly, except for information pertaining to the requestor's client, we find the department must withhold the names and addresses, but not the zip codes and telephone numbers, 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.

Section 552.101 of the Government Code 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). 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). Additionally, under the common-law right of privacy, an individual has a right to be free

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

from the publicizing of private affairs in which the public has no legitimate concern. *Indus. Found.*, 540 S.W.2d 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.² *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.

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. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy).

We note the requestor has a special right of access to his client's private information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023; ORD 481 at 4. Thus, the department may not withhold the requestor's client's information from him under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, some of the information at issue may pertain to individuals who have been de-identified pursuant to sections 730.004 and 730.013 of the Transportation Code and whose privacy interests are thus protected. Accordingly, to the extent the information we marked pertains to individuals who have not been de-identified, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136 of the Government Code states “[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.”³ 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 purposes of this exception. *See* Open Records Decision No. 684 at 9 (2009). However, the purpose of section 552.136 is to

²Section 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).

³The 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).

protect the privacy interests of individuals. Thus, the requestor has a right of access to his client's access device number under section 552.023 of the Government Code and it may not be withheld from him under section 552.136. *See* Gov't Code § 552.023(a); ORD 481 at 4. Therefore, the department must withhold the insurance policy numbers 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 recordings in their entireties, under section 552.130 of the Government Code. Except for information pertaining to the requestor's client, the department must withhold the names and addresses, but not the zip codes and telephone numbers 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. To the extent the information we marked pertains to individuals who have not been de-identified, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.136 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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

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⁴In this instance, the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the department receives another request for this information from an individual other than this requestor or his client, the department must seek another ruling from this office.

Ref: ID# 648298

Enc. Submitted documents

c: Requestor
(w/o enclosures)