



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 13, 2017

Ms. Kristie L. Lewis  
Staff Attorney  
City of Houston  
1200 Travis  
Houston, Texas 77002-6000

OR2017-07959

Dear Ms. Lewis:

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# 653305 (ORU No. 17-0585).

The Houston Police Department (the "department") received a request for information regarding a specified incident involving a named individual. You claim 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.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request because it was created after the date the request was received. The department need not release nonresponsive information in response to this request, and this ruling will not address that information

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. 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). The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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.).

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entire report must be withheld to protect the individual's privacy.

Upon review, we agree the report at issue contains information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. We believe in this instance, withholding only identifying information from the requestor would not preserve the victim's common-law right to privacy. However, in this case, the requestor may be the authorized representative of this individual, and may have a right of access to information pertaining to him that would otherwise be confidential under common-law privacy. *See* Gov't Code § 552.023(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").

Because we are unable to determine whether the requestor is the authorized representative of the individual whose privacy interest is at issue, we must rule conditionally. Accordingly, if the requestor is not acting as the authorized representative of this individual, the department must withhold the submitted information in its entirety under section 552.101 in conjunction with common-law privacy. However, if the requestor is acting as the authorized representative of this individual, the department may not withhold the submitted information from this requestor under section 552.101 on the basis of the individual's common-law privacy. In that event, we will consider whether any of the information is otherwise excepted from disclosure under the Act.

As noted above, public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101 of the Government Code. Thus, with the exception of the named individual's date of birth, to which the requestor has a right of access pursuant to section 552.023 of the Government Code, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).

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.<sup>1</sup> See Gov't Code § 552.130. We have marked the motor vehicle record information the department must withhold under section 552.130 of the Government Code.

In summary, if the requestor is not acting as the authorized representative of the victim at issue, then the department must withhold the submitted information in its entirety under section 552.101 in conjunction with common-law privacy. If the requestor is acting as the authorized representative of the named individual, then we conclude as follows: (1) with the exception of the named individual'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; (2) the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code; and (3) the department must release the remaining responsive 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/sdk

Ref: ID# 653305

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).