



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 15, 2017

Ms. Sylvia McClellan
Assistant City Attorney
Criminal Law & Police Division
City of Dallas
1400 South Lamar Street
Dallas, Texas 75215

OR2017-10436

Dear Ms. McClellan:

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# 657744 (DPD Request No. 2017-24844).

The Dallas Police Department (the "department") received a request for a specified incident report. You state the department will redact information pursuant to sections 552.130(c) and 552.147(b) of the Government Code and Open Records Decision No. 684 (2009).¹ You claim portions of the submitted information are excepted from disclosure under

¹Section 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). Section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person without the necessity of requesting a decision from this office under the Act. *See id.* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

section 552.101 of the Government Code.² We have considered the exception you claim and reviewed the representative sample of information.³

Initially, we note the information you have indicated, and the additional information we have indicated, is not responsive to the request because it does not relate to the specified incident. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release such information in response to this request.

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 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. The court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *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.). However, pursuant to section 552.023 of the Government Code, the requestor has a right of access to her own private information. *See* Gov’t Code § 552.023(a) (“[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the 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 individuals request information concerning themselves). Thus, the department must withhold the date of birth you have marked and indicated, along with the date of birth we have indicated, under section 552.101 of the Government Code. However, we find the remaining responsive information either pertains to the requestor or does not satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department may not withhold the remaining responsive under section 552.101 in conjunction with common-law privacy.

²We note, and you acknowledge, the department did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov’t Code § 552.301(b), (e). Nonetheless, because the exception you claim can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

³We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.⁴ Gov't Code § 552.1175(b). Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Section 552.1175 also encompasses a personal cellular telephone, unless the cellular telephone is paid for by a governmental body. *See* Open Records Decision No. 506 (1988). Some of the remaining information pertains to individuals whose information may be subject to section 552.1175. Thus, to the extent the information we have indicated pertains to individuals whose information is subject to section 552.1175(a), and the individuals elect to restrict access to this information in accordance with section 552.1175(b), the department must withhold the information at issue under section 552.1175 of the Government Code; however, the personal cellular telephone numbers may only be withheld if the cellular telephone service is not paid for by a governmental body. If the individuals whose information is at issue are not subject to section 552.1175(a) or no election is made, the department may not withhold this information under section 552.1175 of the Government Code.

In summary, the department must withhold the date of birth you have marked and indicated, along with the date of birth we have indicated, under section 552.101 of the Government Code. To the extent the information we have indicated pertains to individuals whose information is subject to section 552.1175(a), and the individuals elect to restrict access to this information in accordance with section 552.1175(b), the department must withhold the information at issue under section 552.1175 of the Government Code; however, the personal cellular telephone numbers may only be withheld if the cellular telephone service is not paid for by a governmental body. The department must release the remaining responsive information.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

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).

⁵We note some of the information being released contains private information to which the requestor has a right of access. *See* Gov't Code § 552.023(a); ORD 481 at 4. If the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

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 'Tim Neal', written in a cursive style.

Tim Neal
Assistant Attorney General
Open Records Division

TN/nmd

Ref: ID# 657744

Enc. Submitted documents

c: Requestor
(w/o enclosures)