



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 18, 2017

Ms. Elizabeth Reynolds
Paralegal
City of Dallas
Mail Code - 1361
1500 Marilla Street, Room 7 DN
Dallas, Texas 75201

OR2017-10861

Dear Ms. Reynolds:

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# 658132 (Dallas #C001539-022817).

The City of Dallas (the "city") received a request for information pertaining to a specified address. You state you will release some information. You state the city will redact certain information pursuant to Open Records Letter No. 2011-18466 (2011).¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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

¹Open Records Letter No. 2011-18466 authorizes the city to withhold an originating address of a 9-1-1 caller furnished to the city by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

²We 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 that those records contain substantially different types of information than that submitted to this office.

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. Additionally, 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, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the information at issue must be withheld in its entirety to protect the individual's privacy.

In this instance, although you claim the information in Exhibit C is protected in its entirety by common-law privacy, you have not demonstrated, nor does it otherwise appear, this is a situation in which this information must be withheld in its entirety on that basis. Upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the dates of birth you marked and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.³ However, we find you have not demonstrated any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

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 a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130. Upon review, we find the city must withhold the motor vehicle record information you marked under section 552.130 of the Government Code.

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.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). The remaining information contains employee identification numbers. You state an employee identification number is the same number used for the City of Dallas credit union accounts plus one additional number. Thus,

³As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

the city must withhold the employee identification numbers in the remaining information under section 552.136 of the Government Code.

In summary, the city must withhold the dates of birth you marked and the information we marked under section 552.101 of Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information you marked under section 552.130 of the Government Code. The city must withhold the employee identification numbers in the remaining information under section 552.136 of the Government Code. The remaining information must be released.⁴

Finally, although you ask this office to issue a previous determination permitting the city to withhold dates of birth, we note that in Open Records Letter No. 2017-09757 (2017) this office already issued a previous determination to the city authorizing it to withhold dates of birth of living individuals under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301 (a) of the Government Code).

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,



D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/tdw

⁴The information being released contains social security numbers. 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).

Ref: ID# 658132

Enc. Submitted documents

c: Requestor
(w/o enclosures)