



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 9, 2017

Ms. Dawn Roberts
Assistant City Attorney
Arlington Police Department
Mail Stop 04-0200
P.O. Box 1065
Arlington, Texas 76004-1065

OR2017-18029

Dear Ms. Roberts:

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# 669996 (PD Ref. No. 38417).

The Arlington Police Department (the "department") received a request for information pertaining to named individuals. 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.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section 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. 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 or embarrassing information implicating the

privacy of an individual is withheld. However, in certain situations where the requestor knows the identity of the individual involved, as well as the nature of certain incidents, an entire report must be withheld to protect the individual's privacy.

You seek to withhold the entirety of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. In this instance, some of the information at issue reveals the requestor knows the identity of the individual involved as well as the nature of the information. Therefore, withholding the individual's identity or certain details of this incident from the requestor would not preserve the subject individual's common-law right of privacy in the information at issue. Accordingly, to protect the privacy of the individual to whom the information relates, the department must generally withhold the information we marked in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Additionally, upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note the requestor has a special right of access to her own private information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(b) (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); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). We further note the information at issue reveals the requestor is the spouse of one of the individuals whose information is at issue, and may be acting as this individual's authorized representative. As such, the requestor may have a right of access to her husband's private information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(b); *see also* ORD 481 at 4. Therefore, if the requestor is acting as the authorized representative of her spouse, she has a right of access to his private information pursuant to section 552.023(a), and it may not be withheld from her under section 552.101 of the Government Code in conjunction with common-law privacy. In that instance, the department must withhold the remaining information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is not acting as the authorized representative of her spouse, the department must withhold all the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. In either case, we find none of the remaining information is highly intimate or embarrassing and of no legitimate public concern, and the department may not withhold any portion of the remaining information under section 552.101 of the Government Code 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(a). We note some of the remaining information is generally confidential under section 552.130. Section 552.130 protects privacy interests; thus, as noted above, the requestor may be acting as her husband's authorized representative and may have a right of access to his private information under section 552.023. *See id.* § 552.023(a); *see also* ORD 481 at 4. Therefore, if the requestor

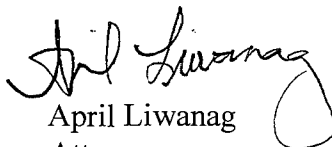
is acting as her husband's authorized representative, the department may not withhold the motor vehicle record information pertaining to her husband under section 552.130 and must release it. In that instance, the department must withhold the remaining information we marked under section 552.130. If the requestor is not acting as her husband's authorized representative, the department must withhold all the information we marked under section 552.130 of the Government Code.

In summary, if the requestor is acting as her husband's authorized representative, the department must withhold the information we marked that pertains to the other individual under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. If the requestor is not acting as the authorized representative of her spouse, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. The remaining information must be released.

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,


April Liwanag
Attorney
Open Records Division

AML/eb

Ref: ID# 669996

Enc. Submitted documents

c: Requestor
(w/o enclosures)