



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 27, 2017

Ms. Stacie S. White
Counsel for the City of Euless
Taylor, Olson, Adkins, Sralla, Elam
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2017-22165

Dear Ms. White:

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# 677460.

The Euless Police Department (the "department"), which you represent, received a request for all information pertaining to a named individual and a specified location during a specified period of time. You state the department will redact information under 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

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 a living person's social security number from public release 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 without the necessity of seeking a decision from this office.

disclosure under sections 552.101 and 552.136 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2011-19038 (2011). In that ruling, we determined the department must (1) withhold the information we and the department have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the motor vehicle record information we have marked under section 552.130 of the Government Code; and (3) release the remaining information, including dates of birth. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure, unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3(1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the department may not now withhold the previously released information, unless its release is expressly prohibited by law or the information is confidential by law. We note since the previous ruling was issued, the law has changed with regard to dates of birth that were previously ordered released. Further, the requestor, in this instance, has a right of access to some of the information at issue pursuant to section 552.023 of the Government Code. Thus, we find the law, facts, and circumstances have changed since the issuance of the previous ruling, and the department may not rely on Open Records Letter No. 2011-19038 as a previous determination for the information at issue. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). Accordingly, we will consider your arguments against disclosure of the submitted information.

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. Additionally, this

²We understand you to raise section 552.136 of the Government Code based on your markings.

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. *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.). Upon review, we find portions of the submitted information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note the requestor has a right of access to his date of birth and his child's date of birth pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (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); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, with the exception of the requestor's date of birth and his child's date of birth, the department must withhold all public citizens' dates of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate 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 552.136 of the Government Code provides, “[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.” Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the department must withhold information you have marked under section 552.136 of the Government Code.

In summary, with the exception of the requestor's date of birth and his child's date of birth, the department must withhold all public citizens' dates of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold information you have marked under section 552.136 of the Government Code. The department must release the remaining information.³

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/>

³We note 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. If the department received another request for this information from a different requestor, the department should again seek a ruling from this office.

[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 'Jahanna Ward', with a large, stylized flourish at the end.

Jahanna Ward
Attorney
Open Records Division

JW/tdw

Ref: ID# 677460

Enc. Submitted documents

c: Requestor
(w/o enclosures)