



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 2, 2017

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
450 Cypress Creek Road
Cedar Park, Texas 78613

OR2017-22388

Dear Ms. Quinn:

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# 677721 (Ref. No. 17-1144).

The Cedar Park Police Department (the "department") received a request for records pertaining to a named individual. You state the department will release some information. You state you will redact social security numbers under section 552.147(b) of the Government Code.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed 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

¹Section 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).

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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information that refers to an individual solely as a victim, witness, or involved person does not implicate the privacy interest of the individual and may not be withheld under section 552.101 on that basis.

Upon review, we find the present request requires the department to compile unspecified law enforcement records concerning the named individual and, thus, generally implicates the named individual's right to privacy. However, we note none of the submitted information lists the named individual as a suspect, arrestee, or criminal defendant. Accordingly, the department may not withhold any of the submitted information as a criminal history compilation under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 (1986). You state Exhibit D pertains to a criminal investigation that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to Exhibit D. Accordingly, the department may withhold Exhibit D under section 552.108(a)(2) of the Government Code.²

As noted above, section 552.101 of the Government Code encompasses common-law privacy. *Indus. Found.*, 540 S.W.2d at 685. Under the common-law right of privacy, an

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. 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.). Thus, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

You state you will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code.³ Section 552.130 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. *See* Gov't Code § 552.130. Accordingly, except for the information we have marked for release, the department must withhold the motor vehicle record information you have marked and the additional information we have marked for withholding under section 552.130 of the Government Code. However, we find you have failed to demonstrate the remaining information at issue is subject to section 552.130. Thus, the department may not withhold the remaining information at issue, which we have marked for release, under section 552.130.

In summary, the department may withhold Exhibit D under section 552.108(a)(2) 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. Except for the information we have marked for release, the department must withhold the motor vehicle record information you have marked and the additional information we have marked for withholding under section 552.130 of the Government Code. The department must release the remaining information.

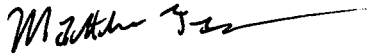
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

³Section 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).

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 "Matthew Taylor", with a long horizontal line extending to the right.

Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/eb

Ref: ID# 677721

Enc. Submitted documents

c: Requestor
(w/o enclosures)