



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 3, 2017

Ms. Yvette Aguilar  
Assistant City Attorney  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2017-22550

Dear Ms. Aguilar:

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# 677924 (JPec1 and JMcg1).

The Corpus Christi Police Department (the "department") received two requests from different requestors for information pertaining to a specified incident. We understand the department will redact the dates of birth you have marked pursuant to Open Records Letter No. 2016-00831 (2016) and the motor vehicle information you have marked pursuant to sections 552.130(c) of the Government Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>Open Records Letter No. 2016-00831 is a previous determination issued to the department authorizing the department to withhold private citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office. Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 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).

Initially, we must address the department's obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). Additionally, under section 552.301(e), a governmental body receiving an open records request for information that it wishes to withhold pursuant to one of the exceptions to public disclosure is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e).

We note the department did not fully comply with section 552.301 of the Government Code. You state the department received the first request on July 14, 2017. Thus, the department's ten-and fifteen-business-day deadlines under section 552.301 for this request were July 28, 2017, and August 4, 2017, respectively. We note you did not raise section 552.108 of the Government Code with respect to information responsive to the first request, which includes some information you have submitted in connection with the second request, until August 22, 2017. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail and common or contract carrier). Consequently, we find you failed to comply with the requirements of section 552.301 of the Government Code with respect to your claim under section 552.108 for this information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). Although you claim section 552.108 of the Government Code for the information at issue, you have failed to establish a compelling reason to address your claimed exception for the information responsive to the first request. However, section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness. Therefore, we will address the applicability of section 552.101 to the information at issue.

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 office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

The submitted information reveals the second requestor knows the identity of the individual involved and the nature of the incident in the submitted report. Therefore, withholding only the individual's identity or certain details of the incident from this requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the department must withhold the submitted information from the second requestor in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, the department has not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the submitted information must be withheld from the first requestor on the basis of common-law privacy. Thus, the department may not withhold the submitted information in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. Nevertheless, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold this information, which we have marked, from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information is not confidential under common-law privacy, and the department may not withhold it from the first requestor under section 552.101 on that ground.

In summary, the department must withhold the submitted information from the second requestor in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, but must release the remaining information to the first requestor.

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](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 that reads "Paige Lay". The signature is written in a cursive, flowing style.

Paige Lay  
Assistant Attorney General  
Open Records Division

PL/gw

Ref: ID#677924

Enc. Submitted documents

cc: 2 Requestors  
(w/o enclosures)