



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

October 10, 2017

Ms. Captoria Brown  
Paralegal  
City of Carrollton  
1945 East Jackson  
Carrollton, Texas 75006

OR2017-23070

Dear Ms. Brown:

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# 678997 (City ID 10698).

The City of Carrollton (the "city") received a request for information pertaining to a specified incident. You state you have released some information. You claim some of the submitted information is 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 information. We have also received and considered comments from the requestor. See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information protected by other statutes, including the federal Driver's Privacy Protection Act of 1994 (the "DPPA"), section 2721 of title 18 of the United States Code. Section 2721 provides, in part:

(a) In general.—A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section[.]

(b) Permissible uses.—Personal information referred to in subsection (a) may be disclosed as follows:

(1) For use by any government agency in carrying out its functions[.]

(c) Resale or redisclosure.—An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b)(11) or (12)). Any authorized recipient (except a recipient under subsection (b)(11)) that resells or rediscloses personal information covered by this chapter must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

18 U.S.C. § 2721(a)(1), (b)(1), (c). The DPPA defines “motor vehicle record,” in relevant part, as “any record that pertains to a motor vehicle operator’s permit issued by a department of motor vehicles[.]” *Id.* § 2725(1). Section 2725 also defines personal information as “information that identifies an individual, including an individual’s photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver’s status.” *See id.* § 2725(3).

The city asserts some of the submitted information contains personal information obtained from the Texas Department of Public Safety (“DPS”). We note this office has concluded the DPPA applies to information in the possession of DPS. Attorney General Opinion JC-0499 at 1 (2002). The city explains it obtained the personal information for use in carrying out its functions with regard to law enforcement.

Based upon the city’s representations and our review, we find the city, in obtaining personal information from DPS to assist the city in carrying out its law enforcement functions, is an authorized recipient of personal information for purposes of section 2721(c). *See* 18 U.S.C. § 2721(b)(1) (providing that personal information may be disclosed by a state department of motor vehicles to any entity acting on behalf of a Federal, State, or local agency in carrying out its functions). Therefore, we conclude the information we marked is personal information obtained from DPS by an authorized recipient and is generally confidential under section 2721 of title 18 of the United States Code. However, an authorized recipient of personal information for purposes of section 2721(c) may only resell or redisclose the information for a use permitted under subsection (b), but not for uses under subsections (b)(11) or (b)(12). *See id.* § 2721(c). Section 2721(b)(13) provides for the permissible

release of personal information subject to the DPPA if the requestor demonstrates he has obtained the written consent of the individual to whom the information pertains. *See id.* § 2721(b)(13). In this instance, the requestor is the authorized representative of one of the individuals to whom the information pertains. Therefore, the city has the discretion to release the requestor's client's information at issue pursuant to subsections 2721(c) and (b)(13) of title 18 of the United States Code. *See id.* § 2721 (b)(13), (c). Otherwise the city must withhold the requestor's information at issue under section 552.101 of the Government Code in conjunction with section 2721 of title 18 of the United States Code. In either case, as we have no indication that release of the remaining information at issue would be for a use permitted under section 2721(b), we conclude the city must withhold the information pertaining to other individuals, which we marked, under section 552.101 of the Government Code in conjunction with section 2721(a) of title 18 of the United States Code. *See id.* § 2721(a)(1). However, we find no portion of the remaining information consists of personal information obtained from the DPS and it may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also 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. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (designation of beneficiary of employee's retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). 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.). We note the requestor has a right of access to his client's date of birth under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (“[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Upon review, we find portions of the remaining information satisfy the standard articulated in *Industrial Foundation*. Accordingly, with the exception of the requestor's client's date of birth, the city must withhold all public citizens' dates of birth you

marked and the additional information we have marked 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 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. We note the requestor has a right of access to his client's motor vehicle record information. *Id.* § 552.023(a). To the extent the motor vehicle record information at issue belongs to the requestor's client, the city must release it under section 552.023 of the Government Code. To the extent the motor vehicle record at issue does not belong to the requestor's client, the city must withhold the information you marked and we have marked under section 552.130 of the Government Code.

Section 552.136(b) 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." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. However, the purpose of section 552.136 is to protect the privacy interests of individuals. Thus, the requestor has a right of access to his client's insurance policy number pursuant to section 552.023 of the Government Code and it may not be withheld from her under section 552.136. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, the city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

In summary, the marked personal information must generally be withheld under section 552.101 of the Government Code in conjunction with section 2721(a) of title 18 of the United States Code, but the city has the discretion to release the marked information pertaining to the requestor's client pursuant to subsections 2721(c) and (b)(13) of title 18 of the United States Code. With the exception of the requestor's client's date of birth, the city must withhold all public citizens' dates of birth you marked and the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the motor vehicle record at issue does not belong to the requestor's client, the city must withhold the motor vehicle record information you marked and the additional information we have marked under section 552.130 of the Government Code. The city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. The remaining information must be released.<sup>1</sup>

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<sup>1</sup>We note the requestor has a right of access to some of the information being released. *See* 18 U.S.C. § 2721(b)(13), (c); Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the city receives another request for the same information from a different requestor, the city must again seek a decision from this office.

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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/gw

Ref: ID# 678997

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)