



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 7, 2017

Mr. John Saenz
Crime Records Bureau
City of McAllen Police Department
P.O. Box 220
McAllen, Texas 78505

OR2017-25519

Dear Mr. Saenz:

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# 683144.

The McAllen Police Department (the "department") received a request for several categories of information pertaining to a specified accident. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.130 excepts from disclosure 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. You assert the submitted audio and video recordings contain motor vehicle record information that is excepted from disclosure under section 552.130. Upon review, we find some of the submitted video recordings, which we have noted, contain confidential motor vehicle record information. In this instance, you state the department does not possess the technological capability to redact information from video files. Thus, we agree the department must withhold the entire video recordings containing motor vehicle record information, which we have noted, under section 552.130 of the

Government Code.¹ *See* Open Records Decision No. 364 (1983). Furthermore, we note some of the submitted photographs contain motor vehicle record information. Accordingly, the department must withhold any motor vehicle record information in the submitted photographs under section 552.130 of the Government Code. However, you have failed to demonstrate any of the remaining information at issue is subject to section 552.130. Thus, the department may not withhold any of the remaining information under section 552.130 of the Government Code.

Section 552.101 of the Government Code excepts “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. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). 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.). Upon review, we find some of the remaining information at issue, which we marked, meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. As noted in part above, the department states it lacks the technical capability to redact information from the video recordings. Therefore, the department must withhold the information we have marked and the video recordings containing dates of birth in their entireties under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information protected by section 411.083 of the Government Code, which pertains to criminal history record information (“CHRI”). CHRI generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Title 28,

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov't Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1, of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411. Upon review, we find you have failed to demonstrate any of the remaining information at issue consists of confidential CHRI. Therefore, the department may not withhold any of the remaining information at issue under section 552.101 in conjunction with section 411.083 of the Government Code.

Some of the remaining information is subject to section 552.136 of the Government Code.² Section 552.136 of the Government Code provides, "Notwithstanding 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"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Accordingly, the department must withhold the information we have marked under section 552.136 of the Government Code.

In summary, the department must withhold the entire video recordings containing motor vehicle record information, which we have noted, as well as any visible or audible motor vehicle record information in the submitted photographs and remaining video under section 552.130 of the Government Code. The department must withhold the information we have marked and the video recordings containing dates of birth in their entireties 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 552.136 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.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

A handwritten signature in cursive script that reads "Paige Lay".

Paige Lay
Assistant Attorney General
Open Records Division

PL/gw

Ref: ID# 683144

Enc. Submitted documents

cc: Requestor
(w/o enclosures)