



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 27, 2017

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

OR2017-26840

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# 685417 (City ID 11029).

The City of Carrollton (the "city") received a request for call notes for a specified incident. You state you have released some of the requested information. You claim some of 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 552.101 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 information protected by 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, including any . . . law enforcement agency, in carrying out its functions[.]

...

(13) For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains.

...

(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), (13), (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 the information it has marked under section 2721 consists of personal information obtained from the Texas Department of Public Safety (“DPS”) that is protected under the DPPA. This office has concluded the DPPA applies to information in the possession of DPS. Attorney General Opinion JC-0499 at 1 (2002). The city also explains it obtained the personal information for use in carrying out its functions with regard to law enforcement. Based upon your 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 find some of the information at issue, which 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 subsection (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 the requestor obtained the written consent of the individual to whom the information pertains. *See id.* § 2721(b)(13). The requestor is one of the individuals to whom the information pertains. Therefore, the city has the discretion to release the information at issue pertaining to the requestor 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 individual, 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.¹ *See id.* § 2721(a)(1). However, the city has failed to demonstrate the remaining information is personal information for purposes of section 2725(3). *See id.* § 2725(3) (personal information means information that identifies a person, including an individual’s photograph, social security number, driver identification number, name, address, but not 5-digit zip code, telephone number, and medical or disability information). Accordingly, the city may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

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. *See* Gov’t Code § 552.130(a). We note section 552.130

¹As our ruling is dispositive, we do not address the other arguments of the city to withhold this information.

protects personal privacy. Accordingly, the requestor has a right of access to the requestor's own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a) ("person or a person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to 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 individual requests information concerning herself). However, the city must withhold the motor vehicle record information of an individual other than the requestor, which we marked, under section 552.130 of the Government Code.

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. Additionally, this 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. *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 the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note the requestor has a right of access to his own birth date. *See* Gov't Code § 552.023(a); ORD 481 at 4. Thus, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must generally withhold the information we marked under section 552.101 of the Government Code in conjunction with section 2721(a) of title 18 of the United States Code; however, the city has the discretion to release the information pertaining to the requestor pursuant to subsections 2721(c) and (b)(13) of title 18 of the United States Code. The city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The city 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/sb

Ref: ID# 685417

Enc. Submitted documents

c: Requestor
(w/o enclosures)