



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 30, 2017

Ms. Katherine Antwi Green
Associate General Counsel
Office of General Counsel
The University of North Texas System
1155 Union Circle, #310907
Denton, Texas 76203

OR2017-27215

Dear Ms. Green:

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# 688328 (ORR# 005350).

The University of North Texas (the "university") received a request for information pertaining to a specified incident. The university indicates it will withhold motor vehicle record information pursuant to section 552.130(c) of the Government Code.¹ The university states it will release some of the requested information. The university claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the university claims and reviewed the submitted representative sample of information.²

¹Section 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).

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). The Third 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 agree most of the information the university marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we find some of the information the university seeks to withhold on this basis relates to an individual who has been de-identified and whose privacy interest is thus protected. This information, which we have marked for release, may not be withheld under section 552.101 in conjunction with common-law privacy. Therefore, with the exception of the information we marked for release, the university must withhold the information it marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual’s autonomy within “zones of privacy” which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual’s privacy interests and the public’s need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the “most intimate aspects of human affairs.” *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). After review of the remaining information at issue, we find the university has not demonstrated any portion of the remaining information falls within the zones of privacy or implicates an individual’s privacy interests for purposes of constitutional privacy. Therefore, the university may not withhold any of the remaining information at issue under section 552.101 on the basis of constitutional privacy.

In summary, with the exception of the information we marked for release, the university must withhold the information it marked under section 552.101 of the Government Code in conjunction with common-law privacy. The university 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 688328

Enc. Submitted documents

c: Requestor
(w/o enclosures)