



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 12, 2017

Mr. Oscar G. Gabaldón, Jr.
Assistant City Attorney
Office of the City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2017-28131

Dear Mr. Gabaldón:

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# 689640 (City Case No. W048000-070317).

The City of El Paso (the "city") received a request for all reports and a dashboard camera video recording related to a specified incident. We understand the city released the CR-3 accident report to the requestor pursuant to section 550.065 of the Transportation Code. *See* Transp. Code § 550.065(c). The city states it also released additional information responsive to the request, including the requested dashboard camera video recording, but made redactions as permitted by section 552.130 of the Government Code without requesting a decision from this office. *See* Gov't Code § 552.130(c). The city further withheld dates of birth pursuant to Open Records Letter No. 2016-10113 (2016).¹ Pursuant to section 552.130(d), the requestor has asked this office to review the information and render a decision as to whether it is excepted from disclosure under section 552.130(a) of the Government Code. *See id.* § 552.130(d). We have considered the city's position and reviewed the information.

¹Open Records Letter No. 2016-10113 is a previous determination issued to the city authorizing the city to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general's decision.

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. 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 the requestor’s client’s date of birth and the city may not withhold such information from this requestor under section 552.101 in conjunction with common-law privacy. *See* Gov’t Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Nonetheless, the city must withhold the public citizen’s date of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state or another state or country. Gov’t Code § 552.130(a)(2). We note section 552.130 protects personal privacy. Thus, the requestor has a right of access to motor vehicle record information pertaining to the requestor’s client and this information may not be withheld from this requestor under section 552.130 of the Government Code. *See id.* § 552.023(a). Accordingly, the city must withhold the discernible license plates that do not belong to the requestor’s client in the submitted video recording under section 552.130 of the Government Code.

Section 552.137 of the Government Code provides, “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c).² *Id.* § 552.137(a)–(c). The city must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its release.

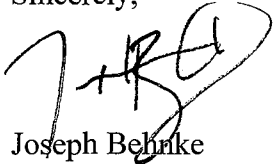
²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480(1987), 470 (1987).

In summary, the city must withhold the public citizen's date of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the discernible license plates that do not belong to the requestor's client in the submitted video recording under section 552.130 of the Government Code. The city must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its release. 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,



Joseph Behrke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 689640

Enc. Submitted documents

c: Requestor
(w/o enclosures)