



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 12, 2018

Ms. Kristie L. Lewis  
Staff Attorney  
Houston Police Department  
1200 Travis, 21st Floor  
Houston, Texas 77002-6000

OR2018-00963

Dear Ms. Lewis:

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# 691210 (ORU No. 17-09907).

The Houston Police Department (the "department") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

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

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<sup>1</sup> Although you also raise section 552.108 of the Government Code for the submitted information, you provide no arguments explaining how this exception is applicable to the information at issue. Therefore, we assume you no longer assert this exception. See Gov't Code §§ 552.301, .302.

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 some of the information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note the requestor may be acting on behalf of one of the individuals at issue. Thus, the requestor may be the authorized representative of that individual, and may have a right of access to that individual's date of birth. *See* Gov't Code § 552.023(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 himself). Accordingly, if the requestor is acting as the authorized representative of the individual at issue, then the department may not withhold this individual's date of birth from this requestor under section 552.101 on the basis of common-law privacy. If the requestor is not acting as the authorized representative of the individual at issue, the department must withhold this individual's date of birth under section 552.101 in conjunction with common-law privacy. In any event, the department must withhold the information we marked and the dates of birth of the other public citizens under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information is highly intimate or embarrassing information and of no legitimate public interest, and it may not be withheld 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.<sup>2</sup> *See* Gov't Code § 552.130. We note section 552.130 protects personal privacy. Thus, as noted above, the requestor may be acting as the authorized representative of one of the individuals in the submitted information, and may have a right of access to information pertaining to the individual that would otherwise be confidential. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, if the requestor is acting as the authorized representative of the individual at issue, then the department may not withhold the motor vehicle record information we marked under section 552.130. If the requestor is not acting as the individual's authorized representative, then the department must withhold the motor vehicle record information we marked under section 552.130.

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<sup>2</sup>The 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).

In summary, if the requestor is not acting as the authorized representative of the individual at issue, then the department must withhold this individual's date of birth under section 552.101 of the Government Code in conjunction with common-law privacy and the motor vehicle record information we marked under section 552.130 of the Government Code. Regardless of whether the requestor is acting as the authorized representative of the individual at issue, the department must withhold the information we marked and the dates of birth of the other public citizens under section 552.101 of the Government Code in conjunction with common-law privacy. The department 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](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 Thompson  
Assistant Attorney General  
Open Records Division

PT/eb

Ref: ID# 691210

Enc. Submitted documents

c: Requestor  
(w/o enclosures)