



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 7, 2018

Ms. Dawn Roberts
Assistant City Attorney
Arlington Police Department
Mail Stop 04-0200
P.O. Box 1065
Arlington, Texas 76004-1065

OR2018-02832

Dear Ms. Roberts:

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# 694538 (Police Dept. Reference No. 47940).

The Arlington Police Department (the "department") received a request for a specified report. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. 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 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.). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

In this instance, although you seek to withhold the submitted information in its entirety, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy. However, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note the requestor may be acting as the authorized representative of one of the individuals whose privacy interests are at issue; thus, the requestor may have a right of access to this individual's private information pursuant to section 552.023 of the Government Code and it may not be withheld from the 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 or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Because we are unable to determine whether the requestor is acting as the authorized representative of one of the individuals whose privacy interests are at issue, we must rule conditionally. If the requestor is acting as the authorized representative of the individual at issue, then the department may not withhold the date of birth relating to this individual under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of the individual at issue, then the department must withhold the date of birth relating to this individual under section 552.101 in conjunction with common-law privacy. In either instance, the department must withhold the information we marked pertaining to the other individual under section 552.101 in conjunction with common-law privacy. However, we find none of the remaining information is highly intimate or embarrassing information 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.¹ See Gov't Code § 552.130. Accordingly, the department must generally withhold the motor vehicle record information we marked under section 552.130 of the Government Code. We note section 552.130 protects privacy interests. As noted above, the requestor may be acting as the authorized representative of one of the individuals whose privacy interests are at issue; thus, the requestor may have a

¹The 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).

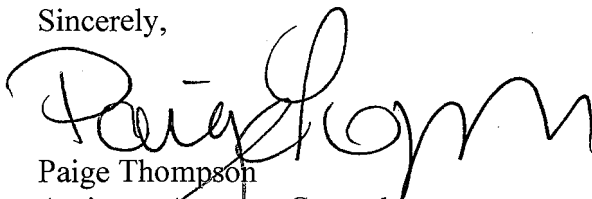
right of access to this individual's private information pursuant to section 552.023 of the Government Code and it may not be withheld from the requestor under section 552.130. *See id.* § 552.023(b); ORD 481 at 4. Because we are unable to determine whether the requestor is acting as the authorized representative of one of the individuals whose privacy interests are at issue, we must rule conditionally. 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 relating to this individual under section 552.130. If the requestor is not acting as the authorized representative of the individual at issue, then the department must withhold the motor vehicle record information we marked relating to this individual under section 552.130. In either instance, the department must withhold the motor vehicle record information we marked pertaining to the other individual under section 552.130.

In summary, if the requestor is not acting as the authorized representative of the individual at issue, then the department must withhold the date of birth relating to this individual under section 552.101 Government Code in conjunction with common-law privacy and the motor vehicle record information we marked relating to this individual under section 552.130 of the Government Code. In either case, the department must (1) withhold the information we marked pertaining to the other individual under section 552.101 of the Government Code in conjunction with common-law privacy, (2) withhold the motor vehicle record information we marked pertaining to the other individual under section 552.130 of the Government Code, and (3) 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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/eb

Ref: ID# 694538

Enc. Submitted documents

c: Requestor
(w/o enclosures)