



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 2, 2019

Ms. Linda Haley
Records Supervisor
City of Leander
705 Leander Drive
Leander, Texas 78641

OR2019-00028

Dear Ms. Haley:

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# 744386.

The Leander Police Department (the "department") received a request for information pertaining to a specified incident. You state the department released some information to the requestor. You claim 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 made confidential by statute, such as section 181.006 of the Health and Safety Code, which provides the following:

[F]or a covered entity that is a governmental unit, an individual's protected health information:

(1) includes any information that reflects that an individual received health care from the covered entity; and

(2) is not public information and is not subject to disclosure under [the Act].

Health & Safety Code § 181.006. Section 181.001(b)(2)(A) defines “covered entity” to include any person who:

(A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site[.]

Id. § 181.001(b)(2)(A). You do not inform us the department is a covered entity for purposes of section 181.006 of the Health and Safety Code. Therefore, we find you failed to demonstrate any of the submitted information is subject to section 181.006 of the Health and Safety Code, and thus, the department may not withhold any information under section 552.101 of the Government Code on that basis.

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. 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.). Accordingly, the department must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the submitted information is highly intimate or embarrassing and of no legitimate public concern, and the department may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of 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. Gov't Code § 552.130. We note section 552.130 protects privacy interests. Thus, the requestor has a right of access to her client's motor vehicle record information. *See id.* § 552.023(a) (person or person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the 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). In this instance, the requestor may have a right of access to some of the motor vehicle record information at issue under section 552.023 of the Government Code. However, because we are unable to determine whether the information at issue belongs to the requestor's client, we must rule conditionally. To the extent the motor vehicle record information we marked belongs to the requestor's client, she has a right of access under section 552.023 to this information, and the department may not withhold such information under section 552.130 from the requestor. To the extent the motor vehicle record information we marked does not belong to the requestor's client, the department must withhold the information we marked under section 552.130 of the Government Code. In either instance, we find the submitted video recording contains motor vehicle record information not belonging to the requestor's client. You state the department lacks the technological capability to redact the motor vehicle record information from the recording. Accordingly, the department must withhold the submitted video recording in its entirety under section 552.130. *See* Open Records Decision No. 364 (1983).

In summary, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the motor vehicle record information we marked does not belong to the requestor's client, the department must withhold the information we marked under section 552.130 of the Government Code. The department must withhold the submitted video recording in its entirety under section 552.130 of the Government Code. 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, 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,

A handwritten signature in black ink, appearing to read "Emily Buchanan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Emily Buchanan
Assistant Attorney General
Open Records Division

EBO/mo

Ref: ID# 744386

Enc. Submitted documents

c: Requestor
(w/o enclosures)