



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 4, 2019

Mr. Brian Sears
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2019-00199

Dear Mr. Sears:

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# 744647 (PIR# 18-8047).

The Texas Department of Public Safety (the "department") received a request for all information pertaining to a specified investigation. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of the submitted information may implicate the interests of the City of Lubbock (the "city"). Accordingly, the department states, and provides documentation showing, it notified the city of the request for information pursuant to section 552.304 of the Government Code.¹ See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have considered the claimed exception 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." *Id.* § 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

¹As of the date of this letter, we have not received comments from the city.

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 of the Government Code. *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.). This office has found that common-law privacy generally protects the identifying information of juvenile victims of abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. We note dates of birth pertaining to individuals who have been de-identified are not protected as the de-identified individuals' privacy interests are, thus, protected.

Upon review, we find some of the submitted information, which we marked and indicated, meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you failed to demonstrate the remaining information is highly intimate or embarrassing to an identifiable individual and not of legitimate public concern. Therefore, none of the remaining information may be withheld 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 operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country.² *See* Gov't Code § 552.130. Accordingly, we find the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, the department must withhold the information we marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we marked 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.

²The 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).

³We note the information being released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

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 "D. Mitchell C", with a long horizontal flourish extending to the right.

Michelle Case
Assistant Attorney General
Open Records Division

DMH/mo

Ref: ID# 744647

Enc. Submitted documents

c: Requestor
(w/o enclosures)