



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 4, 2019

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2019-00235

Dear Mr. Kopp:

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# 744903 (ORR#W234519).

The City of San Antonio (the "city") received a request for information pertaining to a specified incident. The city claims the requested information is excepted from disclosure under section 552.101 of the Government Code. 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." Gov't Code § 552.101. This section encompasses section 730.004 of the Transportation Code, which provides "an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record." Transp. Code § 730.004. "Personal information" means "information that identifies a person," and includes a person's photograph, social security number, driver identification number, name, and address, but does not include a zip code, telephone number, or medical and disability information. *Id.* § 730.003(6). DPS is an "agency" for purposes of chapter 730. *See id.* § 730.003(1) ("agency" is state agency that compiles or maintains motor vehicle records). The city states the submitted information contains personal information that its police department obtained from DPS. *See id.* § 730.007(a)(2)(A)(i) (personal information may be disclosed to government agency in carrying out its functions). An authorized recipient of personal information may not re-disclose the personal information and to do so is a misdemeanor offense. *Id.* § 730.013(a), (d). Upon review, we find some of the submitted information is

generally confidential under sections 730.004 and 730.013 of the Transportation Code. But the requestor may be an authorized representative of the individual whose information is at issue and would, thus, have a right of access to this individual's information pursuant to section 730.006 of the Transportation Code. *See id.* § 730.006 (personal information obtained by agency in connection with motor vehicle record shall be disclosed to requestor who demonstrates requestor has obtained written consent of the person who is subject of the information). Accordingly, we must rule conditionally. If the requestor is not an authorized representative of the individual whose information is at issue, then the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code. However, if the requestor is the individual's authorized representative, then she has a right of access to this information pursuant to section 730.006 of the Transportation Code. The remaining information is not confidential under section 730.004 or 730.013, and the city may not withhold it under section 552.101 on either of those grounds.

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find some of the submitted information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Nevertheless, if the requestor is an authorized representative of the individual at issue, then she has a right of access to the individual's private information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, we must rule conditionally. If the requestor is not an authorized representative of the individual whose information is at issue, then the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is the individual's authorized representative, then she has a right of access to this information pursuant to section 552.023 of the Government Code. The remaining information is not confidential under common-law privacy, and the city may not withhold it under section 552.101 on either of that ground.

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. Section 552.130 protects

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).


personal privacy. Therefore, the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code, unless the requestor has a right of access to it pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4.

In summary, if the requestor is not is not an authorized representative of the individual whose information is at issue, then the city must (1) withhold the information we have marked under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code and common-law privacy, (2) withhold the information we have marked under section 552.130 of the Government Code, and (3) release the remaining information. If the requestor is the individual's authorized representative, then the city must release the submitted information in its entirety.

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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/som

Ref: ID# 744903

Enc. Submitted documents

c: Requestor
(w/o enclosures)