



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

January 23, 2019

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

OR2019-02002

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# 747363 (ORU No. 18-10926).

The Houston Police Department (the "department") received a request for all reports and other investigative materials pertaining to a specified address during a defined time period. You state the department will release some information. You claim some of 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 representative sample of information.<sup>1</sup>

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 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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation. Id.* at 683. This common-law right to privacy protects the identifying information of a complainant in certain situations

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

based on the facts of the case. *See* Open Records Decision No. 394 (1983); *see also* Open Records Decision No. 339 (1982) (concluding common-law privacy protects identifying information of victim of serious sexual offense). The Third 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 portions of the submitted information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note some of the information at issue pertains to individuals that will be de-identified; thus, their privacy interests will be protected. Accordingly, the department must withhold all dates of birth pertaining to identified individuals and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. We find you failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not withhold the remaining information under section 552.101 on this basis.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.<sup>2</sup> Gov't Code § 552.1175(b). We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 of the Government Code not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Some of the remaining information may pertain to an individual to which section 552.1175 applies. Accordingly, to the extent the individual at issue is a person listed under section 552.1175(a) of the Government Code and the individual at issue elects to restrict access to the marked information in accordance with section 552.1175(b) of the Government Code, the department must withhold the information we marked under section 552.1175 of the Government Code, including the cellular telephone number if a governmental body does not pay for the cellular telephone service.

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. *See* Gov't Code § 552.130. Accordingly, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions 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, the department must withhold all dates of birth pertaining to identified individuals and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the individual at issue is a person listed under section 552.1175(a) of the Government Code and the individual at issue elects to restrict access to the marked information in accordance with section 552.1175(b) of the Government Code, the department must withhold the information we marked under section 552.1175 of the Government Code, including the cellular telephone number if a governmental body does not pay for the cellular telephone service. 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.

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,

A handwritten signature in black ink that reads "Cole Hutchison". The signature is written in a cursive style with a large, sweeping "C" at the beginning.

Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/gw

Ref: ID# 747363

Enc. Submitted documents

c: Requestor  
(w/o enclosures)