



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 30, 2019

Mr. Lance Kennedy
Counsel for the City of Denison
Messer, Rockefeller & Fort, P.L.L.C.
6371 Preston Road, Suite 200
Frisco, Texas 75034

OR2019-02722

Dear Mr. Kennedy:

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# 748199 (ORR# D103118BA).

The City of Denison (the "city") received a request for information pertaining to a specified incident report. The city states it has released some of the requested information, but claims the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ We have considered the claimed exceptions and reviewed the submitted information.

¹The city acknowledges, and we agree, it did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). Nevertheless, because sections 552.101 and 552.130 of the Government Code make information confidential, they can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301. Thus, we will consider the claims of the city under those sections.

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. The submitted video recording contains motor vehicle record information that is subject to section 552.130. The city states it lacks the technical capability to redact the information subject to section 552.130 from the video recording. Based on this representation, we agree the city must withhold the submitted video recording in its entirety under section 552.130 of the Government Code.

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 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 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.). Thus, the city must withhold the date of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we conclude none of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the remaining information is not confidential under common-law privacy, and the city may not withhold it under section 552.101 on that ground.

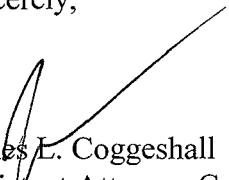
In summary, the city must withhold the submitted video recording in its entirety under section 552.130 of the Government Code. The city must withhold the date of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 748199

Enc. Submitted documents

c: Requestor
(w/o enclosures)