



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 21, 2019

Mr. Mark Soto
Records Clerk
Pflugerville Police Department
P.O. Box 679
Pflugerville, Texas 78691

OR2019-04967

Dear Mr. Soto:

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# 751252 (ORR# W007529-112618).

The Pflugerville Police Department (the "department") received a request for two specified incident reports. You state you have released some information to the requestor. 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 information.

Initially, we note you have redacted information from the submitted documents. We understand you have redacted motor vehicle record information pursuant to section 552.130(c) of the Government Code.¹ We further note you have redacted dates of birth. You do not assert, nor does our review of our records indicate, you have been granted a previous determination to withhold this type of information without seeking a ruling from this office. *See Gov't Code* § 552.301(a); Open Records Decision No. 673 (2000). In this instance, we are able to discern the nature of the information that has been redacted; thus, being deprived of that information does not inhibit our ability to make a ruling. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted information be released. *See Gov't Code* § 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

information requested”); *id.* § 552.302. Thus, in the future, the department should refrain from redacting, without authorization, any information it submits to this office in seeking an open records ruling.

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. This section 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.). However, we note the requestor has a right of access to otherwise private information related to herself and her minor child pursuant to section 552.023 of the Government Code, and this information may not be withheld from her under common-law privacy. *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). Upon review, we conclude portions of the submitted information meet the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked and all dates of birth not belonging to the requestor or her minor child under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find 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 department may not withhold it under section 552.101 on that ground.

As noted above, we understand you are withholding the motor vehicle record information you redacted in accordance with section 552.130(c) of the Government Code. 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 own motor vehicle record information. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, the department must withhold the motor vehicle record information you have redacted which does not belong to the requestor, and the additional motor vehicle record information we have marked, under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked and all dates of birth not belonging to the requestor or her minor child under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information you have redacted which does not belong to the requestor, and the additional motor vehicle record information we have marked, under section 552.130 of the Government Code. The department must release the remaining information to this requestor.²

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/gw

Ref: ID# 751252

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a right of access to some of the information being released. *See* Gov't Code §§ 552.023(a), .137(c); ORD 481 at 4. Thus, the department must again seek a decision from this office if it receives another request for the same information from another requestor.