



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 20, 2019

Ms. Stephanie H. Harris
City Attorney
City of Paris
P.O. Box 9037
Paris, Texas 75461-9037

OR2019-07790

Dear Ms. Harris:

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# 755435.

The Paris Police Department (the "department") received a request for information pertaining to a specified incident. You state you will release some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

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. Upon review, we find portions of the submitted information consist of motor vehicle record information. In this instance, you state the department does not possess the technological capability to redact information from video files. Thus, with exception of the information we marked for release, the department must withhold the information you marked, the information we marked, and the

¹You inform us the department sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You also inform us the department received the required deposit on January 8, 2019. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

entireties of the submitted video recordings under section 552.130 of the Government Code.² See Open Records Decision No. 364 (1983). However, we find the information we marked for release does not consist of motor vehicle record information subject to section 552.130 of the Government Code. Therefore, the department may not withhold the information at issue under section 552.130.

Section 552.101 of the Government Code excepts “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. The court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *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 personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. See Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information you marked and we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); see *id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. See Open Records Decision No. 684 at 9 (2009). We note the purpose of section 552.136 is to protect the privacy interests of individuals. Because “the right of privacy is purely personal,” that right “terminates upon the death of the person whose privacy is invaded.” *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); see also *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded” (quoting RESTATEMENT (SECOND) OF TORTS § 652I)); Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

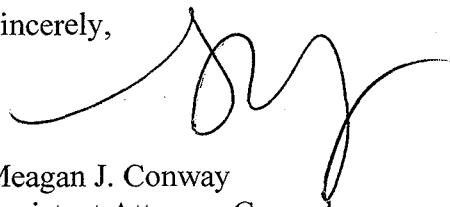
Decision No. 272 (1981) (“the right of privacy is personal and lapses upon death”). We note the insurance policy number we marked belongs to a deceased individual. To the extent the insurance policy number we marked pertains to an account in which any living individual has an interest, the department must withhold the information we marked under section 552.136 of the Government Code. The department must also withhold the insurance policy number you marked under section 552.136 of the Government Code.

In summary, with exception of the information we marked for release, the department must withhold the information you marked, the information we marked, and the entireties of the submitted video recordings under section 552.130 of the Government Code. The department must withhold the information you marked and we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the insurance policy number you marked and the insurance policy we marked, to the extent the insurance policy number we marked pertains to an account in which any living individual has an interest, under section 552.136 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, 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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MC/eb

Ref: ID# 755435

Enc. Submitted documents

c: Requestor
(w/o enclosures)