



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 8, 2019

Ms. Teresa J. Brown
Senior Open Records Assistant
Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2019-12392

Dear Ms. Brown:

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# 764912 (ORR# LYLC022619).

The Plano Police Department (the "department") received a request for a specified incident report. The department 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. 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 the *Industrial Foundation* decision. *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 department must withhold the submitted date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. We also find some of the remaining information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the department must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.¹ However, the remaining information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. ORD 455 at 4. The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find none of the remaining information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the remaining information is not confidential under constitutional privacy, and the department may not withhold it under section 552.101 on 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.² See Gov't Code § 552.130. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold the submitted date of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the information we have marked under section 552.130 of the Government Code. The department must release the remaining information.

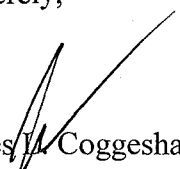
¹As our ruling is dispositive, we do not address the other argument of the department to withhold this information.

²The 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).

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 J. Coggeshall
Assistant Attorney General
Open Records Division

JLC/gw

Ref: ID# 764912

Enc. Submitted documents

c: Requestor
(w/o enclosures)