



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 22, 2019

Ms. Linda Haley
Records Supervisor
City of Leander
705 Leander Drive
Leander, Texas 78641

OR2019-13592

Dear Ms. Haley:

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# 766823.

The Leander Police Department (the "department") received a request for information pertaining to a specified accident, including a redacted report. You state the department will release some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. 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 or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a).

We note the requestor is the authorized representative of one of the individuals whose information is at issue and, thus, has a right of access to her client's information under section 552.023 of the Government Code. Accordingly, the department may not withhold information pertaining to the requestor's client under section 552.130. *See* Gov't § 552.023(a) (person or person's authorized representative has special right of access, beyond

right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). However, the department must withhold the motor vehicle record information that does not pertain to the requestor, which we have marked, under section 552.130 of the Government Code. Additionally, we find most of the submitted video recordings contain visible motor vehicle record information not belonging to the requestor's client. You state the department does not have the technological capability to redact the motor vehicle record information from the video recordings at issue. Thus, with the exception of the video recordings we have indicated, the department must withhold the remaining video recordings in their entireties under section 552.130 of the Government Code. *See* Open Records Decision No. 364 (1983). However, we find the department has failed to demonstrate the remaining recordings contain information subject to section 552.130 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses section 181.006 of the Health and Safety Code, which states that:

For a covered entity that is a governmental unit, an individual's protected health information:

(1) includes any information that reflects that an individual received health care from the covered entity; and

(2) is not public information and is not subject to disclosure under [the Act].

Health & Safety Code § 181.006. Section 181.001(b)(2) defines "[c]overed entity," in part, as "any person who:

(A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site[.]

Id. § 181.001(b)(2)(A). You do not inform us the department is a covered entity for purposes of section 181.006 of the Health and Safety Code. Thus, we find you have failed to demonstrate any portion of the remaining information is subject to section 181.006 of the

Health and Safety Code, and the department may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also 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 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.). We note the requestor is the authorized representative of one of the individuals whose information is at issue and, thus, has a right of access to her client's information under section 552.023 of the Government Code. Therefore, the department may not withhold information pertaining to the requestor's client under section 552.101 on the basis of common-law privacy. *See* Gov't § 552.023(a); ORD 481 at 4. Additionally, we find one of the remaining video recordings contains information which satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. You state the department does not have the technological capability to redact this information from the video recording at issue. Accordingly, with the exception of the requestor's client's date of birth, the department must withhold all dates of birth and the video recording we have marked in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of the video recordings we have indicated, the department must also withhold the remaining video recordings in their entireties, as well as the motor vehicle information we have marked, under section 552.130 of the Government Code. With the exception of the requestor's client's date of birth, the department must withhold all dates of birth and the video recording we have marked in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. 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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/mo

Ref: ID# 766823

Enc. Submitted documents

c: Requestor
(w/o enclosures)