



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 27, 2019

Ms. Jessica Farrias
Administrative Support Specialist
City of Carrollton
P.O. Box 110535
Carrollton, Texas 75011-0535

OR2019-17736

Dear Ms. Farrias:

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# 772213 (City ID No. 15909).

The City of Carrollton (the "city") received a request for information pertaining to a named individual, including information pertaining to an incident on a specified date. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

We understand you to raise section 552.101 of the Government Code in conjunction with section 71.004 of the Family 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. This section encompasses information protected by other statutes. Section 71.004 of the Family Code defines the term "family violence." *See* Fam. Code § 71.004. You generally assert this section makes the submitted information confidential. However, as noted, this section only defines a certain term and does not make any information confidential. Open Records Decision Nos. 658 at 4

¹We note the city failed to comply with section 552.301 of the Government Code in requesting a ruling; however, sections 552.101 and 552.130 of the Government Code can provide compelling reasons to withhold information sufficient to overcome the presumption of openness caused by a failure to comply with section 552.301. *See* Gov't Code §§ 552.301, .302. Accordingly, we will consider the city's arguments.

(1998), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public). Therefore, none of the information at issue is confidential under section 71.004 of the Family Code. Consequently, the city may not withhold any of the information at issue under section 552.101 of the Government Code on the basis of section 71.004 of the Family Code.

Section 552.101 of the Government Code encompasses the doctrine of common-law privacy and the doctrine of constitutional privacy. Common-law privacy 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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Additionally, 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.).

Upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold all public citizens' dates of birth and the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold the information you have marked under section 552.101 of the Government Code on that basis.

Constitutional privacy 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 (quoting *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find the city failed to demonstrate any portion of the remaining information falls within the zones of privacy or implicates a living individual's privacy interests for purposes of constitutional privacy. Therefore, the city may not withhold any of the remaining information under section 552.101 on the basis of constitutional privacy.

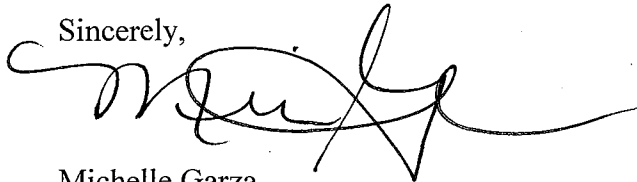
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the city must withhold the motor vehicle record information you have marked and we have marked under section 552.130 of the Government Code.

In summary, the city must withhold all public citizens' dates of birth and the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information you have marked and we have marked under section 552.130 of the Government Code. The remaining information must be released.

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,

A handwritten signature in black ink, appearing to read 'Michelle Garza', written over a horizontal line.

Michelle Garza
Assistant Attorney General
Open Records Division

MG/gw

Ref: ID# 772213

Enc. Submitted documents

c: Requestor
(w/o enclosures)