



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 1, 2019

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2019-21261

Dear Mr. Kopp:

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# 778261 (COSA File# W264985).

The City of San Antonio (the "city") received a request for information pertaining to a specified accident. You indicate the city will redact telephone number and addresses pursuant to Open Records Letter No. 2018-12961 (2018).¹ 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, which we understand to be a representative sample.²

¹Open Records Letter No. 2018-12961 is a previous determination issued to the city authorizing it to withhold telephone numbers of 9-1-1 callers under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code without requesting a decision from this office.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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.³ See Gov't Code § 552.130. The city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.⁴

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. Section 552.101 of the Government Code encompasses section 730.004 of the Transportation Code, which provides "an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record." Transp. Code § 730.004. "Personal information" includes a person's name, address, but not the zip code, telephone number, and medical information. *Id.* § 730.003(6). The Department of Public Safety ("DPS") is an "agency" for purposes of chapter 730. See *id.* § 730.003(1) ("agency" is state agency that compiles or maintains motor vehicle records). You state some of the submitted information was obtained by the city from DPS. See *id.* § 730.007(a)(2)(A)(I) (personal information may be disclosed to government agency in carrying out its functions). An authorized recipient of personal information may not re-disclose the personal information, and to do so is a misdemeanor offense. *Id.* § 730.013(a), (d). Accordingly, we find the city must withhold the names, addresses, and telephone numbers, but not the zip codes, of the individuals at issue in the submitted information it received from DPS under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code. However, the remaining information is not confidential under section 730.004 or section 730.013, and the city may not withhold it under section 552.101 on either of those grounds.

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 the *Industrial Foundation* decision. *Id.* at 683. Additionally, this office has concluded some kinds of medical

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). 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 some of the individuals at issue may be de-identified and their privacy interests will therefore be protected. Upon review, we 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, to the extent the information relates to an identifiable public citizen, the city must withhold the dates of birth and the information we have 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). Upon review, the city must withhold the insurance policy numbers under section 552.136 of the Government Code.

In summary, the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The city must withhold the names, addresses, and telephone numbers, but not the zip codes, of the individuals at issue in the submitted information it received from DPS under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code. To the extent the information relates to an identifiable public citizen, the city must withhold the dates of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the insurance policy numbers under section 552.136 of the Government Code. The city 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/be

Ref: ID# 778261

Enc. Submitted documents

c: Requestor
(w/o enclosures)