



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 12, 2019

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

OR2019-22146

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# 780210 (ORR# W267029, W267030, W267032, W267034, W267035).

The City of San Antonio (the "city") received five requests from the same requestor for specified incident reports. The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.¹

Initially, we note incident report number SAPD19085279 was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2019-17092 (2019). We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the city must rely on Open Records Letter No. 2019-17092 as a previous determination and withhold or release the information in incident report number SAPD19085279 pursuant to that ruling.²

¹We note the information at issue contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

² See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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.). 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, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. We note some of the individuals whose dates of birth are at issue have been de-identified pursuant to common-law privacy. Therefore, the privacy interest in those individuals’ dates of birth are sufficiently protected, and the city may not withhold them under common-law privacy. Nevertheless, the city must withhold the remaining dates of birth under section 552.101 in conjunction with common-law privacy. The remaining information is not confidential under common-law privacy, and the city 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.³ *See* Gov’t Code § 552.130. The city must withhold the submitted motor vehicle record information, a representative sample of which we have marked, under section 552.130 of the Government Code.

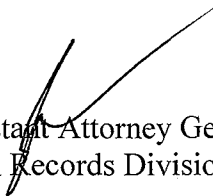
In summary, the city must rely on Open Records Letter No. 2019-17092 as a previous determination and withhold or release the information in incident report number SAPD19085279 pursuant to that ruling. The city must withhold the information we have marked and, with the exception of the dates of birth of the individuals who have been de-identified, the remaining dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the submitted motor vehicle record information, a representative sample of which we have marked, under section 552.130 of the Government Code. The city must release the remaining information.

³The 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 780210

Enc. Submitted documents

c: Requestor
(w/o enclosures)