



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 12, 2019

Ms. Megan Ratchel
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2019-22213

Dear Ms. Ratchel:

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# 787740 (Ref. # LGL 19-113).

The Waco Police Department (the "department") received a request for information pertaining to a specified incident. You indicate the department is relying on the previous determination issued to the department in Open Records Letter No. 2018-06462 (2018) to withhold some of the requested information under 552.108(a)(1) of the Government Code. *See Gov't Code* § 552.301(a); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). You state you will withhold motor vehicle record information pursuant to section 552.130(c) of the Government Code and social security numbers pursuant to section 552.147(b) of the Government Code.¹ You also state you will withhold dates of birth of public citizens pursuant to the previous determination issued in Open Records Letter No. 2018-15072 (2018).² You claim some of the submitted information is excepted from

¹ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). 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. *See Gov't Code* § 552.147(b).

² Open Records Letter No. 2018-15072 is a previous determination authorizing the City of Waco to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office. *See Gov't Code* § 552.301(a); ORD 673.


disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.³

Section 552.101 of the Government Code excepts “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 *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). Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the department has failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the department may not withhold the remaining information under section 552.101 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 <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,



Meagan Conway
Assistant Attorney General
Open Records Division

MC/eb

³ We 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.

Ref: ID# 787740

Enc. Submitted documents

c: Requestor
(w/o enclosures)