



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 4, 2019

Mr. Nathan Brown
Assistant City Attorney
City of New Braunfels
550 Landa Street
New Braunfels, Texas 78130

OR2019-24618

Dear Mr. Brown:

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# 783845 (PD Control No. 2418-19).

The New Braunfels Police Department (the "department") received a request for all reports involving a named individual. You claim portions of the submitted information are exempted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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. This section 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. *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 submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the department must withhold the information we have marked and all identified public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate any of the remaining information is subject to common-law privacy, and it may not be withheld under section 552.101 on that basis.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.¹ Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" Gov't Code § 552.1175(a)(1). Section 552.1175 also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Thus, to the extent the information we have marked relates to a licensed peace officer who elects to restrict access to their information in accordance with section 552.1175(b), it must be withheld from disclosure under section 552.1175 of the Government Code; however, any cellular telephone numbers may only be withheld under section 552.1175 if a governmental body does not pay for the cellular services. If the individual whose information is at issue is not a currently-licensed peace officers or does not elect to restrict access to the information in accordance with section 552.1175(b), the marked information may not be withheld under section 552.1175.

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 department must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked and all identified public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information we have marked relates to a licensed peace officer who elects to restrict access to their information in accordance with section 552.1175(b) of the Government Code, it must be withheld from disclosure under section 552.1175 of the Government Code; however, any cellular telephone numbers may only be withheld under section 552.1175 of the Government Code if a governmental body does not pay for the cellular services. The department must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code. The department must release the remaining information.

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (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,

A handwritten signature in black ink, appearing to read 'Tim Neal', is written over a horizontal line.

Tim Neal
Assistant Attorney General
Open Records Division

TN/jxd

Ref: ID# 783845

Enc. Submitted documents

c: Requestor
(w/o enclosures)