



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 15, 2019

Mr. Jim Kachelmeyer
Assistant City Attorney
City of Georgetown
P.O. Box 409
Georgetown, Texas 78627-0409

OR2019-28883

Dear Mr. Kachelmeyer:

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# 791397 (PIR# G008301-072619).

The City of Georgetown (the "city") received a request for all records pertaining to a specified incident involving the requestor. You state you have released some information with redactions pursuant to section 552.130(c) of the Government Code.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have redacted motor vehicle record information pursuant to section 552.130(c) of the Government Code. However, we note you have also redacted dates of birth in the submitted information. A governmental body may not withhold information from the public without asking this office for a decision under section 552.301 of the Government Code unless a provision of the Act or a previous determination specifically

¹ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 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).

² Although the city does not raise section 552.101 of the Government Code in its brief, we understand the city to raise this exception based on its markings.

authorizes the governmental body to do so. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). You do not assert, nor does our review of the records indicate, you have been authorized to withhold dates of birth without seeking a ruling from this office. Therefore, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, because we can discern the nature of the information at issue, we will address its public availability. In the future, however, you should refrain from redacting any information that the city is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov't Code § 552.302.

Section 552.130 of the Government Code excepts from disclosure 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 id.* § 552.130. The submitted offense report and video recordings contain confidential motor vehicle record information that is excepted from disclosure under section 552.130. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his own motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from him under section 552.130. *See id.* § 552.023(a) ("person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). However, the city states it does not possess the technological capability to redact information from video files. Thus, we agree the city must withhold the video recordings in their entireties under section 552.130 of the Government Code. *See* Open Records Decision No. 364 (1983). In addition, the city must withhold the unredacted information we marked in the incident report under section 552.130 of the Government 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. 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. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). In addition, the Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *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.). Thus, with the exception of the requestor's date of birth, to which the requestor has a right of access

pursuant to section 552.023 of the Government Code, the city must withhold the public citizens' dates of birth it marked and the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. *See* Gov't Code § 552.023(a); ORD 481 at 4.

In summary, the city must withhold the unredacted information we marked in the incident report and the video recordings in their entireties under section 552.130 of the Government Code. With the exception of the requestor's date of birth, the city must withhold the public citizens' dates of birth it marked and the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release the remaining information.³

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,



Kimbell Kesling
Attorney
Open Records Division

KK/eb

Ref: ID# 791397

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ As noted above, the requestor has a special right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a); ORD 481 at 4. Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.