



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 31, 2019

Ms. Dawn Roberts
Assistant City Attorney
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2019-30756

Dear Ms. Denholm:

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# 794425 (ORR# 85331).

The Arlington Police Department (the "department") received a request for information pertaining to a specified address. The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the claimed exception and reviewed the submitted information.

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

¹ We note the department did not comply with the requirements of section 552.301 of the Government Code. See Gov't Code § 552.301(b). Nevertheless, because sections 552.101 and 552.130 of the Government Code make information confidential, they can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301. The 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). Thus, we will consider whether the submitted information must be withheld under the Act on those grounds..

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. This office has found the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information, *see* Open Records Decision No. 455 (1987); and personal financial information not relating to the financial transaction between an individual and a governmental body, *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.). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entirety of the information must be withheld to protect the individual's privacy.

The department argues the submitted information must be withheld in its entirety on the basis of common-law privacy. However, the department has not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the submitted information must be withheld on that ground. Nevertheless, we find the submitted dates of birth and some of the remaining information, which we have marked, satisfy the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the department must withhold the submitted dates of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information is not confidential under common-law privacy, and the department 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. *See* Gov't Code § 552.130. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.


In summary, the department must withhold the submitted dates of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the information we have marked under section 552.130 of the Government Code. The department must release the remaining information.²

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.

² We note the information at issue contains a social security number. 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).

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 794425

Enc. Submitted documents

c: Requestor
(w/o enclosures)