



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 2, 2019

Ms. Cecilia Gamez
Lead CSS, Crime Records Bureau
McAllen Police Department
P.O. Box 220
McAllen, Texas 78501

OR2019-33694

Dear Ms. Gamez:

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# 807327.

The McAllen Police Department (the "department") received a request for information pertaining to a specified incident. You state you do not have information responsive to portions of the request.¹ You state you have released some information to the requestor, including the police officer's crash report pursuant to section 550.065(c) of the Transportation Code. *See* Transp. Code § 550.065(c) (providing for release of accident report to person or entity listed under this subsection). You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. We note, because section 552.130 protects privacy interests, the requestor has a right of access to his client's motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.*

¹ The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

§ 552.023(a) (“person or a 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 herself). Upon review, we find the submitted video recordings contain information subject to section 552.130 that does not belong to the requestor’s client. You state the department does not have the technological capability to redact the motor vehicle record information from the recordings. Accordingly, the department must withhold the submitted recordings in their entireties under section 552.130. See Open Records Decision No. 364 (1983). Further, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.²

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. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. See Open Records Decision Nos. 600 (1992) (employee’s designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). 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.). We note the requestor has a right of access to his client’s date of birth. See Gov’t Code § 552.023(a); ORD 481 at 4. Upon review, we conclude some of the remaining information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the requestor’s client’s date of birth, the department must withhold all public citizens’ dates of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

² As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”³ Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. We note, because section 552.136 protects privacy interests, the requestor has a right of access to his client’s information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, the department must withhold the insurance policy number we have marked under section 552.136 of the Government Code.

In summary, the department must withhold the submitted recordings in their entireties and the motor vehicle record information we have marked under section 552.130 of the Government Code. With the exception of the requestor’s client’s date of birth, the department must withhold all public citizens’ 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 withhold the insurance policy number we have marked under section 552.136 of the Government Code. 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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/mo

³ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ms. Cecilia Gamez - Page 4

Ref: ID# 807327

Enc. Submitted documents

c: Requestor
(w/o enclosures)