



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

December 12, 2019

Ms. Kristen Mills  
Open Records Specialist  
Baytown Police Department  
3200 North Main Street  
Baytown, Texas 77521

OR2019-35215

Dear Ms. Mills:

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# 802894 (PIR# 15571).

The City of Baytown (the "city") received a request for information pertaining to a specified incident. You state the city released information to the requestor, but made redactions as permitted by section 552.130(c) of the Government Code without requesting a decision from this office. Pursuant to section 552.130(d), the requestor has asked this office to review the information redacted by the city and render a decision as to whether it is excepted from disclosure under section 552.130(a) of the Government Code. We have considered the city's position 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."<sup>1</sup> 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

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<sup>1</sup> 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).

found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See, e.g.*, Open Records Decision Nos. 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 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 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.).

We note, however, the requestor represents the insurance provider for one of the individuals listed in the information at issue. As such, the requestor, if acting as the individual's authorized representative, has a right of access to the insured's date of birth. *See* Gov't Code § 552.023(a) (“[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the 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 an individual or authorized representative asks governmental body to provide information concerning that individual). Therefore, to the extent the requestor is acting as the insured's authorized representative, the city must release to the requestor the date of birth pertaining to the insured, but withhold the remaining public citizens' dates of birth under section 552.101 of the Government Code. To the extent the requestor is not acting as the insured's authorized representative, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code. Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the city must withhold the remaining information we marked under section 552.101 in conjunction with common-law privacy.

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. As noted previously, the requestor represents the insurance provider for one of the individuals listed in the information at issue. As such, the requestor, if acting as the individual's authorized representative, has a right of access to the insured's motor vehicle record information. *See id.* § 552.023(a); ORD 481 at 4. Therefore, to the extent the requestor is acting as the insured's authorized representative, the city must release to the requestor the information we marked pertaining to the insured, but withhold the remaining information marked under section 552.130 of the Government Code. To the extent the requestor is not acting as the insured's authorized representative, the department must withhold all of the motor vehicle record information we marked under section 552.130 of the Government Code. However, we find the remaining information does not consist of motor vehicle record information for purposes of section 552.130 and may not be withheld on that basis.

Section 552.136 of the Government Code provides, “Notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected,

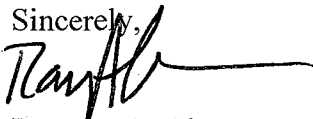
assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Accordingly, the city must withhold the insurance policy numbers we marked under section 552.136 of the Government Code.

In summary, to the extent the requestor is acting as the insured’s authorized representative, the city must release to the requestor the date of birth pertaining to the insured; however, the city must withhold the remaining information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the requestor is acting as the insured’s authorized representative, the city must release to the requestor the information we marked pertaining to the insured; however, the city must withhold the remaining information we marked under section 552.130 of the Government Code. The city must withhold the information we marked under section 552.136 of the Government Code. The city 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,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/eb

Ref: ID# 802894

Enc. Submitted documents

c: Requestor  
(w/o enclosures)