



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 7, 2020

Ms. Julie P. Doshier  
Counsel for the City of Allen  
Nichols, Jackson, Dillard, Hager & Smith  
500 North Akard, Suite 1800  
Dallas, Texas 75201

OR2020-00611

Dear Ms. Doshier:

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# 805184 (ORR# 111714).

The City of Allen (the "city"), which you represent, received a request for all records related to a specified animal. The city states it will redact dates of birth of members of the public pursuant to the previous determination issued in Open Records Letter No. 2018-11817 (2018).<sup>1</sup> The city also states it is withholding access device numbers pursuant to section 552.136(c) of the Government Code.<sup>2</sup> The city further states it is withholding certain information pursuant to Open Records Decision No. 684 (2009).<sup>3</sup> The city states it is releasing some of the requested information. The city claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions the city claims and reviewed the submitted information.

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<sup>1</sup> Open Records Letter No. 2018-11817 authorized the city to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general's decision. *See* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

<sup>2</sup> Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

<sup>3</sup> Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information without the necessity of requesting an attorney general decision.

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 information protected by section 730.004 of the Transportation Code, which provides “an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.” Transp. Code § 730.004. “Personal information” means “information that identifies a person,” and includes a person’s photograph, social security number, driver identification number, name, address but not zip code, telephone number, or medical and disability information. *Id.* § 730.003(6). The Texas Department of Public Safety (“DPS”) is an “agency” for purposes of chapter 730. *See id.* § 730.003(1) (“agency” is state agency that compiles or maintains motor vehicle records). The city states some of the submitted information consists of records that were obtained by the city from DPS. *See id.* § 730.007(a)(2)(A)(i) (personal information may be disclosed to government agency in carrying out its functions). An authorized recipient of personal information may not re-disclose the personal information and to do so is a misdemeanor offense. *Id.* § 730.013(a), (d). Accordingly, the city must withhold the driver identification numbers, names, addresses but not zip codes, and medical or disability information of the individuals in the information the city received from DPS under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code.

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we agree most of the information the city marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We also find some of the remaining information, which we marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we find the city has not demonstrated some of the information it marked is highly intimate or embarrassing and not of legitimate public concern. This information, which we have marked for release, may not be withheld under section 552.101 in conjunction with common-law privacy. Therefore, with the exception of the information we marked for release, the city must generally withhold the information it marked and we marked under section 552.101 of the Government Code in conjunction with common-law privacy. In this instance, however, the submitted information reveals the requestor is the spouse of an individual whose privacy interests are at issue. Thus, the requestor may be the authorized representative of that individual, and may have a right of access to information pertaining to the individual that would otherwise be confidential under common-law privacy. *See* Gov’t Code § 552.023(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 himself). Accordingly, if the requestor is acting as the authorized representative of the individual, then the city may not withhold the marked information pertaining to that individual from this requestor under section 552.101 on the basis of common-law privacy. However, if the requestor is not acting as the authorized representative of the individual, then the city must withhold the information it marked and 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. The city states it is withholding the motor vehicle record information it marked pursuant to section 552.130(c) of the Government Code.<sup>4</sup> The city must also withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, the city must withhold the driver identification numbers, names, addresses but not zip codes, and medical or disability information of the individuals in the information the city received from DPS under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code. With the exception of the information we marked for release, the city must generally withhold the information it marked and we marked under section 552.101 of the Government Code in conjunction with common-law privacy; however, if the requestor is acting as the authorized representative of her spouse, then the city may not withhold the marked information pertaining to that individual under section 552.101 on the basis of common-law privacy. The city must also withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The city must release the remaining information to this requestor.<sup>5</sup>

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->

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<sup>4</sup> 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).

<sup>5</sup> We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the city receives another request for the same information from a different requestor, the city must again seek a decision from this office.

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 "Claire Morris Sloan". The signature is fluid and cursive, with the first name "Claire" being the most prominent.

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/gw

Ref: ID# 805184

Enc. Submitted documents

c: Requestor  
(w/o enclosures)