



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 24, 2020

Ms. Karen Strand
Senior Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2020-02317

Dear Ms. Strand:

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# 808034.

The Mesquite Police Department (the "department") received a request for body worn camera recordings pertaining to a specified incident involving the requestor. We understand you will redact dates of birth pursuant to the previous determination issued in Open Records Letter No. 2015-24970 (2015).¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim 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." 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 also found personal financial information not relating to a financial transaction between an

¹ Open Records Letter No. 2015-24970 authorizes the department to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

individual and a governmental body is generally highly intimate or embarrassing. *See generally* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983).

Upon review, we find portions of the submitted information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note the requestor is one of the individual's whose information is at issue. Thus, the requestor has a special right of access to his own information that would ordinarily be withheld to protect his privacy interests, thus, his information may not be withheld under section 552.101 on that basis. *See* Gov't Code § 552.023(a)-(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, with the exception of information pertaining to the requestor, the department must withhold the visible and audible insurance company names within the submitted recordings 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. We note, however, because section 552.130 is designed to protect the privacy of individuals, 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); ORD 481 at 4. Accordingly, with the exception of information pertaining to the requestor, the department must withhold the visible license plates; visible and audible license plate numbers, states, and expiration dates; visible registration stickers; images of driver's licenses; and audible and visible driver's license numbers, states, and expiration dates under section 552.130.

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. We note, however, because section 552.136 is designed to protect the privacy of individuals, the requestor has a right of access to his own information under section 552.023 of the Government Code and it may not be withheld from him under section 552.136. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, with the exception of information pertaining to the requestor, the department must withhold audible and visible insurance policy numbers under section 552.136.

In summary, with the exception of information pertaining to the requestor, the department must withhold (1) the visible and audible insurance company names within the submitted recordings under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the visible license plates; visible and audible license plate numbers, states, and expiration dates; visible registration stickers; images of driver's licenses; and audible and visible driver's license numbers, states, and expiration dates under section 552.130 of

the Government Code; and (3) the insurance policy numbers under section 552.136 of the Government Code. The remaining information must be released.

Finally, you ask this office to issue a previous determination permitting the department to withhold the name of the insurance company of an individual under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301 (a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, this letting 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,



Pearlie Gault
Attorney
Open Records Division

PG/eb

Ref: ID# 808034

Enc. Submitted documents

c: Requestor
(w/o enclosures)