



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

OR2020-02354

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# 808310.

The City of Mesquite (the "city") received a request for information pertaining to a specified incident. You state you will release some information to the requestor. You claim some of the submitted information is 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 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). Upon review, we conclude some of the submitted information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note, however, the requestor has a right of access to his client's information. See Gov't Code § 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). However, we are unable to determine whether some of the information at issue relates to the requestor's client. Therefore, we must rule conditionally. To the extent the information we have indicated relates to the requestor's client, the city may not withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information we have indicated does not relate to the requestor's client, the city must withhold this information under section 552.101 of the Government Code 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. 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. See *id.* § 552.023(a); ORD 481 at 4. In this instance, the requestor may have a right of access to some of the motor vehicle record information at issue under section 552.023 of the Government Code. However, because we are unable to determine whether the information at issue belongs to the requestor's client, we must rule conditionally. To the extent the motor vehicle record information we have indicated belongs to the requestor's client, he has a right of access under section 552.023 to this information, and the city may not withhold such information under section 552.130 from the requestor. To the extent the motor vehicle record information we have indicated does not belong to the requestor's client, the city must withhold the motor vehicle record information we indicated under section 552.130 of the Government Code.

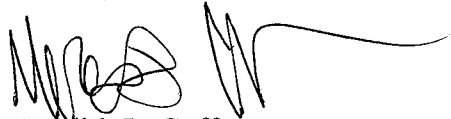
Section 552.136(b) of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); see *id.* § 552.136(a) (defining "access device"). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. As previously noted, because section 552.136 protects privacy interests, the requestor has a right of access to his client's private information. See *id.* § 552.023(a); ORD 481 at 4. However, because we are unable to determine whether the information at issue belongs to the requestor's client, we must rule conditionally. To the extent any of the insurance policy numbers in the remaining information belong to the requestor's client, the city may not withhold such information under section 552.136 from the requestor. To the extent the insurance policy numbers in the remaining information do not belong to the requestor's client, the city must withhold such information under section 552.136 of the Government Code.

In summary, to the extent the information we have indicated does not relate to the requestor's client, the city must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the motor vehicle record information we have indicated does not belong to the requestor's client, the city must withhold the motor vehicle record information we indicated under section 552.130 of the Government Code. To the extent the insurance policy numbers in the remaining information do not belong to the requestor's client, the city must withhold such information under section 552.136 of the Government Code. The city must release the remaining information.

Finally, the city asks this office to issue a previous determination that would permit it to withhold certain financial information under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting a decision from this office. We decline to issue such a previous determination at this time. Accordingly, 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/gw

Ref: ID# 808310

Enc. Submitted documents

c: Requestor
(w/o enclosures)