



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 27, 2020

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

OR2020-06371

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# 813663 (Reference# 112750).

The City of Allen (the "city"), which you represent, received a request for information pertaining to a named individual on specified dates. You state you will withhold certain information pursuant to sections 552.130(c) and 552.136(c) of the Government Code and dates of birth pursuant to the previous determination issued in Open Records Letter No. 2018-11817 (2018).¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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

¹ Section 552.130(c) 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). Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See id.* § 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). Open Records Letter No. 2018-11817 authorizes the city to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting an attorney general decision.

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). You state some of the submitted information consists of records that were obtained by the city’s police department 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, with the exception of the information we marked for release, the city must withhold the personal information it marked under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code. However, the remaining information is not confidential under section 730.004 or 730.013, and the city may not withhold it under section 552.101 on either of those grounds.

Section 552.101 of the Government Code also 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 the *Industrial Foundation* decision. *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). 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.). However, we note some of the information at issue pertains to individuals who have been de-identified pursuant to section 730.004 of the Transportation Code and whose privacy interests are protected; thus, the city may not withhold the dates of birth pertaining to the de-identified individuals under section 552.101 on that basis. Nevertheless, we find some of the remaining information at issue satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, with the exception of the information we marked for release, the city must withhold the information it marked and the additional information we have marked 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. *See* Gov’t Code § 552.130. We note section 552.130 protects personal privacy. Accordingly, 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. 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). Upon review, we find some of the remaining

information is subject to section 552.130 of the Government Code. Accordingly, with the exception of the information we marked for release, the city must withhold the motor vehicle record information it marked and the additional information we marked under section 552.130 of the Government Code.

In summary, with the exception of the information we marked for release, the city must withhold the personal information it marked 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 withhold the information it marked and the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we marked for release, the city must withhold the motor vehicle record information it marked and the additional information we marked under section 552.130 of the Government Code. The remaining information must be released.²

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,



Pearlie Gault
Attorney
Open Records Division

PG/eb

Ref: ID# 813663

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² We note the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. See Gov't Code § 552.023(a); ORD 481 at 4. Accordingly, if the city receives another request for this same information from a different requestor, it must again seek a ruling from this office.