



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 18, 2020

Ms. Delietrice Henry
Open Records Assistant
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2020-08523

Dear Ms. Henry:

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# 817665 (Plano ORR #P006226-010920, #P006232-010920, and #P006533-012320).

The Plano Police Department (the "department") received three requests from two requestors for information pertaining to a specified incident. You state you have released some of the requested information to each of the requestors. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative samples of information.²

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 the doctrine of common-law privacy, which

¹ Although you do not raise section 552.130 of the Government Code in your brief, we understand you to assert this exception based on your markings.

² This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

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 or 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). 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.).

Upon review, we find portions of the information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with respect to the information submitted for request ORR #P006232-010920 ("second request"), the department must withhold the information you have marked from the requestor in the second request ("second requestor") under section 552.101 in conjunction with common-law privacy.

With respect to the information submitted for ORR #P006226-010920 and #P006533-012320 ("first and third requests"), we note the requestor in those requests ("first requestor") may be acting as the authorized representative of one of the individuals whose information is at issue. Thus, the first requestor may have a special right of access to this individual's information that would ordinarily be withheld to protect that individual's privacy interests. 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). Therefore, we rule conditionally. To the extent the first requestor is not acting as the authorized representative of the individual at issue, the department must withhold from the first requestor the information you marked and we marked under section 552.101 in conjunction with common-law privacy. To the extent the first requestor is acting as the authorized representative of the individual at issue, the department must withhold from the first requestor the information you marked and we marked that pertains to the other individual under section 552.101 in conjunction with common-law privacy, but may not withhold from the first requestor the marked information pertaining to the individual for whom the first requestor is the authorized representative under section 552.101 on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). The department must withhold from the second requestor the information you have marked in the information submitted for the second request under section 552.130.

With respect to the information submitted for the first and third requests, we note the first requestor may be acting as the authorized representative of one of the individuals whose information is at issue. Because section 552.130 is designed to protect the privacy of individuals, the first requestor may have a right of access to the motor vehicle record information of the individual at issue under section 552.023 and it may not be withheld from him under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Therefore, we rule conditionally. To the extent the first requestor is not acting as the authorized representative of the individual at issue, the department must withhold the information you marked in the information submitted for the first and third requests under section 552.130. To the extent the first requestor is acting as the authorized representative of the individual at issue, the department must withhold from the first requestor the information you marked that pertains to the other individual under section 552.130, but may not withhold from the first requestor the marked information pertaining to the individual for whom the first requestor is the authorized representative under section 552.130.

In summary, with respect to the information submitted for the second request, the department must (1) withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy, (2) withhold the information you have marked under section 552.130 of the Government Code, and (3) release the remaining information submitted for the second request to the second requestor. With respect to the information submitted for the first and third requests, to the extent the first requestor is not acting as the authorized representative of the individual at issue, the department must (1) withhold the information you marked and we marked under section 552.101 of the Government Code in conjunction with common-law privacy, (2) withhold the information you marked under section 552.130 of the Government Code, and (3) release the remaining information submitted for the first and third requests to the first requestor. With respect to the information submitted for the first and third requests, to the extent the first requestor is acting as the authorized representative of the individual at issue, the department must (1) withhold the information you marked and we marked that pertains to the other individual under section 552.101 of the Government Code in conjunction with common-law privacy, (2) withhold the information you marked that pertains to the other individual under section 552.130 of the Government Code, and (3) release the remaining information submitted for the first and third requests to the first requestor.

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

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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,

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/mo

Ref: ID# 817665

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)