



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 29, 2020

Ms. D'Ann Shea Smith
Assistant City Attorney
City of Sugar Land
P.O. Box 110
Sugar Land, Texas 77487-0110

OR2020-12148

Dear Ms. Smith:

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# 825020 (ORR# W008837).

The Sugar Land Police Department (the "department") received a request for information related to a specified automotive accident. You state you have released some information to the requestor. You claim portions of the submitted information are 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 "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section 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 individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992) (personal financial information includes choice of insurance carrier), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). 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. 03-13-000546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). We note the

requestor has a special right of access under section 552.023 of the Government Code to information pertaining to his client that would otherwise be withheld to protect his client's privacy. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access to records that contain information relating to the person that are 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). Upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of any information belonging to the requestor's client, the department must withhold the information you have indicated, the additional information we have indicated, and all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

...

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b).¹ Some of the remaining information relates to a licensed peace officer but the information is not held in an employment context. Accordingly, if the peace officer whose information is at issue elects to restrict access to the information in accordance with section 552.1175(b), the department must withhold the information we have indicated under section 552.1175 of the Government Code. Conversely, if the peace officer does not elect to restrict access to the information in accordance with section 552.1175(b), the indicated information may not be withheld under section 552.1175.

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

¹ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

identification document issued by an agency of this state or another state or country is excepted from public release.² 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 her client's motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from her under section 552.130. See *id.* § 552.023(a); ORD 481 at 4. Accordingly, with the exception of information pertaining to the requestor's client, the department must withhold all visible license plates and all audible license plate numbers and drivers license numbers and states of issuance under section 552.130 of the Government Code.

In summary, with the exception of any information belonging to the requestor's client, the department must withhold the information you have indicated, the additional information we have indicated, and all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. If the peace officer whose information is at issue elects to restrict access to the information in accordance with section 552.1175(b) of the Government Code, the department must withhold the information we have indicated under section 552.1175 of the Government Code. With the exception of information pertaining to the requestor's client, the department must withhold all visible license plates and all audible license plate numbers and drivers license numbers and states of issuance under section 552.130 of the Government Code. The department must release the remaining information to this requestor.³

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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/rm

² The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481, 480 (1987), 470 (1987).

³ 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 department receives another request for the same information from a different requestor, the de must again seek a decision from this office.

Ref: ID# 825020

Enc. Submitted documents

c: Requestor
(w/o enclosures)