



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 01, 2020

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

OR2020-12336

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# 826257 (ORR# 114150).

The City of Allen (the "city"), which you represent, received a request for information pertaining to a specified accident. The city states it is withholding some of the requested information pursuant to sections 552.130(c) and 552.136(c) of the Government Code and Open Records Letter No. 2018-11817 (2017).¹ The city states it has released some of the requested information, but claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

¹ Section 552.130(c) of the Government Code 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 pursuant to 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 dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general's decision. See *id.* § 552.301(a); Open Records Decision No. 673 at 7-8 (2001).

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. This section encompasses 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, and address, but does not include a zip code, telephone number, or medical and disability information. *Id.* § 730.003(6). The 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). The city states its police department is an authorized recipient of personal information contained in motor vehicle records maintained by DPS. Accordingly, the city must withhold the personal information it has marked under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code.

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. We note the individuals whose information the city seeks to withhold under common-law privacy have been de-identified pursuant to sections 730.004 and 730.013 of the Transportation Code. Therefore, the privacy interests in those individuals’ information are sufficiently protected. Accordingly, the city may not withhold any of the information it has marked under section 552.101 in conjunction with common-law privacy. Thus, the city must withhold the personal information it has marked under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code, but release the remaining information.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

² Because the requestor has a special right of access to some of the information being released, the city must again seek a decision from this office if it receives another request for the same information from another requestor.

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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jxd

Ref: ID# 826257

Enc. Submitted documents

c: Requestor
(w/o enclosures)