



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 5, 2020

Ms. Dyanne Hargrove  
Paralegal  
City of Cedar Park  
450 Cypress Creek Rd  
Cedar Park, Texas 78613

OR2020-12664

Dear Ms. Hargrove:

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# 826084 (Reference Number 20-641).

The Cedar Park Police Department (the "department") received a request for information pertaining to a particular case involving the requestor. You state the department will withhold information pursuant to section 552.130(c) of the Government Code.<sup>1</sup> You argue some of the submitted information was not properly requested pursuant to chapter 1701 of the Occupations Code. You also claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information, a portion of which is a representative sample.<sup>2</sup>

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must

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<sup>1</sup> 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 in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

<sup>2</sup> We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 (1986). You state Exhibit C pertains to a criminal investigation that did not result in a conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to Exhibit C. Accordingly, the department may withhold Exhibit C under section 552.108(a)(2) of the Government Code.<sup>3</sup>

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. 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 most of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the information we have marked for release, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the department has failed to demonstrate the information we have marked for release is highly intimate or embarrassing and not of legitimate concern to the public. Therefore, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

As noted above, you state the department will withhold motor vehicle record information, which you marked, pursuant to section 552.130(c) of the Government Code. We note the remaining information contains additional motor vehicle record information. 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 a 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(a). Accordingly, the department must withhold the motor vehicle record information you marked, and the additional motor vehicle record information we have marked, under section 552.130 of the Government Code.

In summary, the department may withhold Exhibit C under section 552.108(a)(2) of the Government Code. With the exception of the information we have marked for release, the department must withhold the information you marked under section 552.101 of the

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<sup>3</sup> As our ruling is dispositive, we need not address the applicability of section 1701.661(a) of the Occupations Code to the submitted video recordings. *See* generally Occ. Code § 1701.661(a), (e).

Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information you marked, and the additional motor vehicle record information we have marked, under section 552.130 of the Government Code. The department must release the remaining information to this requestor.<sup>4</sup>

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,

Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/jxd

Ref: ID# 826084

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup> We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the department must again seek a decision from this office if it receives another request for the same information from another requestor.