



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 7, 2020

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

OR2020-12965

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# 827098 (ORR# 114175).

The City of Allen (the "city"), which you represent, received a request for all calls for service to a specified address during a certain date range. You state the city will withhold dates of birth of members of the public pursuant to the previous determination issued in Open Records Letter No. 2018-11817 (2018).¹ You also state the city is withholding motor vehicle record information pursuant to section 552.130(c) of the Government Code and social security numbers pursuant to section 552.147(b) of the Government Code.² You claim some of 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.

¹ Open Records Letter No. 2018-11817 authorized 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* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

² Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 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 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

Section 552.101 of the Government Code exempts from public 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 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 you 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 information protected by chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov’t Code § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that DPS maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1 of the Government Code. *See* Gov’t Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F, of the Government Code. Upon review, we find the information you marked, and the additional information we marked, consists of CHRI which the city must withhold under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

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 *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). This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. See, e.g., Open Records Decision Nos. 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). However, we note some of the information at issue, including some of the dates of birth you state you will withhold pursuant to Open Records Letter No. 2018-11817, 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 information pertaining to the de-identified individuals under section 552.101 on the basis of common-law privacy. Nevertheless, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, with the exception of the information we marked for release, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated any of the remaining information at issue is highly intimate or embarrassing to an identifiable individual and not of legitimate public concern. Thus, the city may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

You state the city is withholding the motor vehicle record information you marked pursuant to section 552.130(c) of the Government Code. Upon review, we find some of the remaining information is subject to section 552.130 of the Government Code. 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. Accordingly, with the exception of the information we marked for release, the city must withhold the motor vehicle record information you marked and the additional information we marked under section 552.130 of the Government Code. However, we find you have not demonstrated the remaining information consists of motor vehicle record information under section 552.130 of the Government Code, and the city may not withhold any portion of the remaining information on that basis.

In summary, with the exception of the information we marked for release, the city must withhold the personal information you marked under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code. The city must withhold the information you marked and we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. With the exception of the information we marked for release, the city must withhold the information you 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 you marked and the additional information we marked under section 552.130 of the Government Code. The city must release the remaining information.

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,

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/mo

Ref: ID# 827098

Enc. Submitted documents

c: Requestor
(w/o enclosures)