



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 12, 2020

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

OR2020-13480

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# 827943 (File No. 114287).

The City of Allen (the "city"), which you represent, received a request for a specified incident report. You state the city will withhold certain information pursuant to section 552.136(c) of the Government Code and Open Records Letter No. 2018-11817 (2018).<sup>1</sup> You state the city released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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

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<sup>1</sup> 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* Gov't Code § 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 is a previous determination issued to the city authorizing it to withhold certain public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

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). 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). You state the city is an authorized recipient of personal information contained in motor vehicle records maintained by DPS. Accordingly, the city must withhold the information you 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 chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier. *See Open Records Decision No. 649 (1996)*. You indicate the city is part of an emergency communication district that is subject to section 772.318 of the Health and Safety Code. You state the telephone number you marked consists of the originating telephone number furnished by a 9-1-1 service supplier. Accordingly, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety 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 *Industrial Foundation*. *Id.* at 683. 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.). 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 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 particular insurance carrier), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy)*. Upon review, we conclude some of the remaining information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note some of the dates of birth in the remaining information pertain to individuals who have been de-identified pursuant to sections 730.004 and 730.013 of the Transportation Code. Therefore, the privacy interests for these individuals are sufficiently protected, and the city may not

withhold the dates of birth of de-identified individuals under common-law privacy. Accordingly, with the exception of the information we marked for release, the city must withhold the information you marked, and the additional information we marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the city has failed to demonstrate the information we marked for release is highly intimate or embarrassing and not of legitimate public interest. Therefore, the city may not withhold the information we marked for release under section 552.101 of the Government Code in conjunction with common-law privacy.

You state the city will withhold the motor vehicle record information you marked pursuant to section 552.130(c) of the Government Code.<sup>2</sup> Section 552.130 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, none of the remaining information at issue is subject to section 552.130, and the city may not withhold it on that basis.

In summary, the city must withhold the 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 under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. With the exception of the information we marked for release, the city must withhold the information you marked, and the additional information we 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.<sup>3</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->

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<sup>2</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>3</sup> We note the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov't Code § 552.023; *see also* Open Records Decision No. 481 at 4 (1987). Accordingly, if the city receives another request for this same information from a different requestor, it must again seek a ruling from this office.

[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,

Katie Stallcup  
Attorney  
Open Records Division

AKS/eb

Ref: ID# 827943

Enc. Submitted documents

c: Requestor  
(w/o enclosures)