



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 4, 2020

Ms. Delietrice Henry  
Open Records Assistant  
City of Plano  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2020-15360

Dear Ms. Henry:

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# 831571 (ORR# P007793-032520).

The Plano Police Department (the "department") received a request for a specified incident report. You claim 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 representative sample of information.<sup>1</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. 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. 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

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<sup>1</sup> We assume 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.

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.). We note the requestor has a right of access to her own otherwise private information pursuant to section 552.023 of the Government Code, thus information related solely to the requestor may not be withheld under common-law privacy. *See Gov't Code § 552.023(a)* (“person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is 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 herself).

Upon review, we find some of the submitted information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must generally withhold the information we have marked and the dates of birth not belonging to the requestor under section 552.101 of the Government Code in conjunction with common-law privacy. In this instance, however, the requestor is the spouse of one of the individuals whose privacy interests are at issue. Thus, the requestor may be the authorized representative of that individual, and may have a right of access to information pertaining to the individual that would otherwise be confidential under common-law privacy. *See Gov't Code § 552.023(a)*; ORD 481 at 4 (1987). Accordingly, if the requestor is acting as the authorized representative of her spouse, then the department may not withhold any portion of the marked information or this individual’s date of birth from this requestor under section 552.101 on the basis of common-law privacy. However, if the requestor is not acting as the authorized representative of her spouse, then the department must withhold the information we have marked and this individual’s date of birth under section 552.101 in conjunction with common-law privacy. In either case, the department must withhold the date of birth not belonging to the requestor or her spouse under section 552.101 on the basis of common-law privacy. Further, we find you have not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

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.<sup>2</sup> *See Gov't Code § 552.130*. We note section 552.130 protects privacy interests. Further, as noted above, the requestor may be acting as her spouse’s authorized representative, and may have a right of access to information pertaining solely to her spouse that would otherwise be confidential. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, if the requestor is acting as the authorized representative of her spouse, then the department may not withhold the information we have marked under section 552.130 of the Government Code. If the requestor is not acting as this individual’s

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

authorized representative, then the department must withhold the information we have marked under section 552.130 of the Government Code.

In summary, if the requestor is not acting as the authorized representative of her spouse, then the department must withhold the information we have marked and this individual's date of birth under section 552.101 in conjunction with common-law privacy and the information we have marked under section 552.130 of the Government Code. The department must withhold the date of birth not belonging to the requestor or her spouse under section 552.101 on the basis of common-law privacy. The department must release the remaining information to this requestor.

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/be

Ref: ID# 831571

Enc. Submitted documents

c: Requestor  
(w/o enclosures)