



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 28, 2020

Mr. Victor M. Cristales
Counsel for the City of Wylie
Law Offices of Abernathy, Roeder, Boyd & Hullett, P.C.
1700 Redbud Boulevard, Suite 300
McKinney, Texas 75069

OR2020-18771

Dear Mr. Cristales:

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# 837938.

The Wylie Police Department (the "department"), which you represent, received a request for fourteen points of information pertaining to a specified incident. We understand the department has released some of the requested information to the requestor. You claim the submitted information is 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 552.130 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. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to her client's motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from her under section 552.130. *See id.* § 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). However, upon review, we find the submitted information contains confidential motor vehicle record information not belonging to the requestor's client that is excepted from disclosure under section 552.130. In this instance, you state the department does not possess the technological capability to redact information from the

submitted video recordings. Accordingly, we find the department must withhold the information we marked and the submitted video recordings in their entireties under section 552.130 of the Government Code.¹ *See* Open Records Decision No. 364 (1983). However, we find the remaining information does not contain information subject to section 552.130. Thus, the department may not withhold any portion of the remaining information under section 552.130 of the Government Code.

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. 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. The Third Court of Appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—May 22, 2015, pet. denied) (mem. op.). We note the requestor has a right of access to her client’s date of birth, and this information may not be withheld from her under common-law privacy. *See* Gov’t Code § 552.023(a); ORD 481 at 4. Upon review, we find you have failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, the department must withhold the information we marked and the submitted video recordings in their entireties under section 552.130 of the Government Code. The department must 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

¹ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

² As noted above, the requestor has a special right of access to some of the information being released in this instance. *See* Gov’t Code § 552.023(a); ORD 481 at 4. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/be

Ref: ID# 837938

Enc. Submitted documents

c: Requestor
(w/o enclosures)