



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 29, 2020

Ms. Stacie S. White  
Counsel for the City of Benbrook  
Taylor Olson Adkins Sralla Elam L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2020-18964

Dear Ms. White:

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# 837951.

The City of Benbrook (the "city"), which you represent, received a request for a specified incident report. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "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. This office has 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) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional

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<sup>1</sup> Although you do not raise section 552.136 of the Government Code in your brief, we understand you to raise this exception based on your markings.

coverages, direct deposit authorization, forms allowing employee to allocate pre-tax compensation to group insurance, health care or dependent care), 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). The 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.). However, we note the requestor has a right of access to information relating to herself, and this information may not be withheld from her under section 552.101 in conjunction with common-law privacy. *See Gov't Code* § 552.023(a) (person or person's authorized representative has special right of access to records that contain information relating to the person that are 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 conclude some of the submitted information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information you have marked and the additional information we have marked under section 552.101 of the Government Code 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 county is excepted from public release. *See Gov't Code* § 552.130. We note section 552.130 protects privacy interests. Thus, the requestor has a right of access to her own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Therefore, the city must withhold the motor vehicle record information you have marked and the additional information we have marked under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code provides, “[notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Gov't Code* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. *See Open Records Decision* No. 684 at 9 (2009). We note section 552.136 protects personal privacy. Accordingly, the requestor has a right of access to her own access device numbers pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Thus, the city must withhold the insurance policy number you have marked under section 552.136 of the Government Code.

In summary, the city must: (1) withhold the information you have marked and the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the motor vehicle record information you have marked and the additional information we have marked under section 552.130 of the Government Code; (3) withhold the insurance policy number you have marked under

section 552.136 of the Government Code; and (4) release the remaining information to this requestor.<sup>2</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,

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/mo

Ref: ID# 837951

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup> We note the requestor has a right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a); ORD 481 at 4. Accordingly, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).