



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 29, 2020

Mr. Jeffrey C. Monk, DBA
Administration Manager
City of Houston
1200 Travis, 10th Floor
Houston, Texas 77002-6000

OR2020-18966

Dear Mr. Monk:

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# 837642 (OR# 20-04881).

The Houston Police Department (the "department") received a request for all information related to a specified incident. 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 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 common-law right to privacy protects the identifying information of a complainant in certain situations based on the facts of the case. *See* Open Records Decision No. 394 (1983); *see also* Open Records Decision No. 339 (1982) (concluding common-law privacy protects identifying information of victim of serious sexual offense). 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.). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entirety of the requested information must be withheld to protect the individual's privacy.

We understand you to argue the submitted information must be withheld in its entirety on the basis of common-law privacy. Upon review, we find this is not a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy to protect the privacy interests of the individual at issue. Thus, the department may not withhold the submitted information in its entirety under section 552.101 of the Government Code on that basis. However, we find some of the information at issue, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note the remaining information includes the dates of birth of individuals who have been de-identified and whose privacy interests are thus protected. Therefore, the department must withhold the information we have marked and the identifiable individual's date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate concern to the public. Thus, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.¹ Gov't Code § 552.1175. Section 552.1175 applies, in part, to "a current or former member of the United States Army, Navy, Air Force, Coast Guard, or Marine Corps, an auxiliary service of one of those branches of the armed forces, or the Texas military forces, as that term is defined by Section 437.001." *Id.* § 552.1175(a)(15). Accordingly, to the extent the information we have marked relates to an individual who is subject to section 552.1175(a) and who elects to restrict access to the information in accordance with section 552.1175(b), the department must withhold this information under section 552.1175 of the Government Code. Conversely, if the individual whose information is at issue is not subject to section 552.1175(a) or does not elect to restrict access to his information in accordance with section 552.1175(b), then this information may not be withheld under section 552.1175.²

Section 552.130 of the Government Code exempts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or

¹ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

² Regardless of the applicability of section 552.1175 of the Government Code, we note 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* Gov't Code § 552.147(b).

country. *See id.* § 552.130. Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked and the identifiable individual's date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information we have marked relates to an individual who is subject to section 552.1175(a) and who elects to restrict access to the information in accordance with section 552.1175(b), the department must withhold this information under section 552.1175 of the Government Code. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The department 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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/mo

Ref: ID# 837642

Enc. Submitted documents

c: Requestor
(w/o enclosures)