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ATTORNEY GENERAL OF TEXAS

August 24, 2020

Ms. Andrea D. Russell
Counsel for the City of Richland Hills
Taylor Olson Adkins Sralla Elam LLP
6000 Western Place, Suite 200
Fort Worth, Texas-76107-4654

OR2020-21199

Dear Ms. Russell:

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# 841716 (Ref. No. 20-147).

The City of Richland Hills (the "city"), which you represent, received a request for information regarding a specified vehicle accident, including the CR-3 accident report, incident report, call sheet, and audio and video recordings. You state the city does not maintain a portion of the requested information.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.1175 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted the requested CR-3 accident report and incident report. To the extent this information existed on the date the city received the request, we assume the city has released it. If the city has not released any such information, it must do so at this time. *See Gov't Code* §§ 552.301(a), .302; *see also* Open Records Decision No.

¹ The Act does not require a governmental body to create or release information that did not exist when a request for information was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

² Although you raise section 552.117 of the Government Code, we note section 552.1175 of the Government Code is the proper exception to raise for information not held in an employment context.

664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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 section 58.008 of the Family Code, which provides, in part:

(b) Except as provided by Subsection (c), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult records;

(2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subsection (c) or Subchapter B, D, or E.

Fam. Code § 58.008(b); *see also id.* § 51.03(a) (defining “delinquent conduct” for purposes of title 3 of Family Code). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. *See* Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 22. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Section 58.008 does not make information related to traffic offenses confidential. *See id.* §§ 51.02(16) (defining traffic offense), .03(a) (delinquent conduct for purposes of title 3 of Family Code does not include traffic offenses), .03(b) (conduct indicating a need for supervision does not include traffic offense). Upon review, we find you have failed to demonstrate the information at issue identifies an individual who is ten years of age or older or under the age of seventeen as a suspect or offender of delinquent conduct or conduct indicating a need for supervision. Therefore, the city may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.008 of the Family 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.). 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 No. 600 (1992) (personal financial information includes choice of insurance carrier). We note the requestor has a right of access to his clients' personal information and dates of birth, and this information may not be withheld from him under 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 individuals request information concerning themselves). Upon review, we find a portion of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, with the exception of the information pertaining to the requestor's clients, the city must withhold all audible and visible public citizens' dates of birth and the information we indicated 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. Gov't Code § 552.1175(b). Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Thus, to the extent the information at issue pertains to a licensed peace officer who elects that the city restrict access to his information in accordance with section 552.1175(b), the city must withhold the information you indicated under section 552.1175 of the Government Code.

You state the city will redact certain motor vehicle information pursuant to section 552.130(c) of the Government Code.³ 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 id.* § 552.130. We note section 552.130 protects personal privacy. Therefore, the requestor has a right of access to his clients' motor vehicle record information under section 552.023 of the Government Code, and it may not be withheld from him under section 552.130. *See id.* § 552.023(a); ORD 481. Accordingly,

³ 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).

with the exception of the information pertaining to the requestor's clients, the city must withhold the motor vehicle record information it indicated and the additional motor vehicle record information we indicated under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "[n]otwithstanding 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."⁴ Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). We note the requestor has a right of access to his clients' own insurance policy numbers pursuant to section 552.023 of the Government Code, and it may not be withheld from this requestor under section 552.136. *See* Gov't Code § 552.023(a); ORD 481 at 4. Accordingly, with the exception of the information pertaining to the requestor's clients, the city must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

In summary, with the exception of the information pertaining to the requestor's clients, the city must withhold all audible and visible public citizens' dates of birth and the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information at issue pertains to a licensed peace officer who elects that the city restrict access to his information in accordance with section 552.1175(b), the city must withhold the information you indicated under section 552.1175 of the Government Code. With the exception of the information pertaining to the requestor's clients, the city must withhold the motor vehicle record information it indicated and the additional motor vehicle record information we indicated under section 552.130 of the Government Code. With the exception of the information pertaining to the requestor's clients, the city must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code. The city must release the remaining information.⁵

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

⁴ 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).

⁵ We note the requestor has a special right of access to some of the information being released in this instance. *See* Occ. Code § 1701.661(f); Gov't Code § 552.023(a); ORD 481 at 4. Therefore, if the city receives another request for this information from a different requestor, the city 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,

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/mo

Ref: ID# 841716

Enc. Submitted documents

c: Requestor
(w/o enclosures)