



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 11, 2020

Ms. Angelie Thomas
Assistant City Attorney
City of Sugar Land
P.O. Box 110
Sugar Land, Texas 77487-0110

OR2020-22980

Dear Ms. Thomas:

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# 843911 (ORR# W009714 & W009920).

The City of Sugar Land (the "city") received two requests from different requestors for information pertaining to a specified motor vehicle accident. You state you will withhold motor vehicle record information pursuant to section 552.130(c) of the Government Code.¹ You claim some of 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 "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. This office has found personal financial information not relating to a financial transaction between an

¹ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 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).

individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 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 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.). We note the second requestor has a right of access to his date of birth pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (“[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the 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 individuals request information concerning themselves). Thus, with the exception of the second requestor’s date of birth, which must be released to him, the city must withhold the public citizens’ dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. Further, both requestors may have a right of access to the remaining information we marked under section 552.101 of the Government Code in conjunction with common-law privacy pursuant section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a); ORD 481 at 4. Thus, we must rule conditionally. To the extent the remaining information we marked does not pertain to either requestor, the city must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the remaining information we marked pertains to either requestor, then the requestor at issue has a right of access to this information under section 552.023 of the Government Code and the city must release it to them.

Section 552.136(b) 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.”² 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. Upon review, we find the remaining information contains insurance policy numbers subject to section 552.136. Accordingly, the city must withhold the insurance policy number we marked under section 552.136 of the Government Code. However, section 552.136 protects privacy interests. Accordingly, both requestors may have a right of access to the remaining insurance policy number we marked under section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Thus, we must rule conditionally. To the extent the remaining insurance policy number we marked does not pertain to either requestor, the city must withhold this information under section 552.136 of the Government Code. To the extent the insurance policy number we marked pertains to either requestor, then the requestor at issue has a right of access to this information under section 552.023 of the Government Code and the city must release it to them.

² 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).

In summary, with the exception of the second requestor's date of birth, which must be released to him, the city must withhold the public citizens' dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the remaining information we marked does not pertain to either requestor, the city must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the insurance policy numbers we marked do not pertain to either requestor, the city must withhold this information under section 552.136 of the Government Code. The city 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,

Meagan Hunter
Assistant Attorney General
Open Records Division

MH/jxd

Ref: ID# 843911

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)