



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 17, 2020

Ms. Julie P. Doshier
Counsel for the City of Allen
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
500 North Akard, Suite 1800
Dallas, Texas 75201

OR2020-28686

Dear Ms. Doshier:

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# 854005 (ORR# W007246).

The Allen Police Department (the "department"), which you represent, received a request for information related to incident number 18-048921. The department states it will redact dates of birth of members of the public pursuant to the previous determination issued in Open Records Letter No. 2018-11817 (2018).¹ The department also states it is withholding access device numbers pursuant to section 552.136(c) of the Government Code.² The department claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions the department claims and reviewed the submitted information.

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 information protected by section 730.004 of the Transportation Code, which provides "an agency may not disclose personal

¹ Open Records Letter No. 2018-11817 authorized the department to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general's decision. *See* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

² Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

information about any person obtained by the agency in connection with a motor vehicle record.” Transp. Code § 730.004. “Personal information” means “information that identifies a person,” and includes a person’s driver identification number, name, address but not zip code and telephone number, or medical and disability information. *Id.* § 730.003(6). The Texas Department of Public Safety (“DPS”) is an “agency” for purposes of chapter 730. *See id.* § 730.003(1) (“agency” is state agency that compiles or maintains motor vehicle records). The department states some of the submitted information, which it marked, consists of records that were obtained by the department from DPS. *See id.* § 730.007(a)(2)(A)(i) (personal information may be disclosed to government agency in carrying out its functions). An authorized recipient of personal information may not re-disclose the personal information and to do so is a misdemeanor offense. *Id.* § 730.013(a), (d). Accordingly, the department must withhold the information it marked under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See, e.g.*, Open Records Decision Nos. 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). We note common-law privacy protects the interests of individuals, not those of corporate and other business entities. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989) (corporation has no right to privacy (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950))), *rev’d on other grounds*, 796 S.W.2d 692 (Tex. 1990). Upon review, we agree most of the information the department marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we find the department has not demonstrated some of the information it marked is highly intimate or embarrassing and not of legitimate public concern. This information, which we have marked for release, may not be withheld under section 552.101 in conjunction with common-law privacy. Therefore, with the exception of the information we marked for release, the department must withhold the information it 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 country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the department must withhold the motor vehicle record information it marked and the additional information we marked under section 552.130 of the Government Code.

In summary, the department must withhold the information it marked under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code. With the exception of the information we marked for release, the department must withhold the information it marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information it marked and the additional information we marked under section 552.130 of the Government Code. The department must release the remaining information to this requestor.³

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,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/rm

Ref: ID# 854005

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 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). Thus, if the department receives another request for the same information from a different requestor, the department must again seek a decision from this office.