



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 8, 2020

Mr. Michael W. Dixon  
Counsel for the City of Woodway  
Haley & Olson  
100 North Ritchie Road, Suite 200  
Waco, Texas 76712

OR2020-30590

Dear Mr. Dixon:

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# 857288.

The City of Woodway (the "city"), which you represent, received a request for a specified incident report. 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 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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, however, the requestor has a right of access to her own date of birth pursuant to section 552.023 of the Government Code, and this information may not be withheld from her pursuant to

common-law privacy. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

In this instance, you seek to withhold the submitted information in its entirety under section 552.101 in conjunction with common-law privacy. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy. Accordingly, the city may not withhold the entirety of the submitted information under section 552.101 of the Government Code on that basis. However, upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the city must withhold the information we have marked and the date of birth not belonging to the requestor under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate any of the remaining information is subject to common-law privacy, and it may not be withheld under section 552.101 on that basis.

We understand the city will redact the motor vehicle record information you have marked pursuant to section 552.130(c) of the Government Code.<sup>1</sup> 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. We note, however, because section 552.130 protects privacy interests, 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. Thus, with the exception of the information pertaining to the requestor, the city must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

We understand the city will redact information pursuant to section 552.147(b) of the Government Code.<sup>2</sup> Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. Gov't Code § 552.147(a). As noted above, however, the requestor has a right of access to information pertaining to herself that would otherwise be private. *See id.* § 552.023; ORD 481 at 4. Therefore, with the exception of the social security number belonging to the requestor, the city may

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<sup>1</sup> Section 552.130(c) 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).

<sup>2</sup> 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).

withhold the social security numbers of living individuals under section 552.147(a) of the Government Code.

In summary, the city: (1) must withhold the information we have marked and the date of birth not belonging to the requestor under section 552.101 of the Government Code in conjunction with common-law privacy; (2) must withhold the motor vehicle record information you have marked, with the exception of the information pertaining to the requestor, under section 552.130 of the Government Code; (3) may withhold the social security numbers of living individuals, with the exception of the social security number belonging to the requestor, under section 552.147(a) of the Government Code; and (4) must release the remaining information to this requestor.<sup>3</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/jxd

Ref: ID# 857288

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup> We note the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov't Code § 552.023; *see also* ORD 481 at 4. Accordingly, if the city receives another request for this same information from a different requestor, it must again seek a ruling from this office.