



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 10, 2022

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78207

OR2022-00759

Dear Mr. Kopp:

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# 925652 (ORR# W409447).

The San Antonio Police Department (the "department") received a request for all reports involving the requestor and a named individual at a specified address during a specified time period. We understand the department will redact public citizens' dates of birth pursuant to Open Records Letter No. 2016-08566 (2016).¹ The department claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 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 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 photograph, social security number, date of birth, driver identification number, name, address but not the zip code, e-mail address, telephone number, and medical or disability information. Act of May 31, 2021, 87th Leg., R.S., S.B. 15, § 5 (to be codified at Transp. Code § 730.003(6)). The Texas Department of

¹ Open Records Letter No. 2016-08566 authorizes the department to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office. 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).

Public Safety (“DPS”) is an “agency” for purposes of chapter 730. *See* Transp. Code § 730.003(1) (“agency” is state agency that compiles or maintains motor vehicle records). The department states some of the submitted information 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). We note the requestor has a right of access to her own information pursuant to section 730.006 of the Transportation Code. *See id.* § 730.006 (personal information obtained by agency in connection with motor vehicle record shall be disclosed to requestor who demonstrates requestor has obtained written consent of the person who is subject of the information). Accordingly, with the exception of any information pertaining to the requestor, the department must withhold the dates of birth, driver identification numbers, names, addresses but not zip codes, e-mail addresses, and medical or disability information of the individuals in the marked information the department received from DPS under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code. However, the remaining information the department marked is not confidential under section 730.004 or 730.013 of the Transportation Code and the department may not withhold that information under section 552.101 of the Government Code on that basis.

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). The department seeks to withhold some of the remaining information, which it marked under section 552.101 in conjunction with common-law privacy. However, in this instance, the requestor is the individual whose privacy interest is at issue in the information the department marked. *See* Gov’t Code § 552.023(a) (“person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to 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 individual requests information concerning herself). Thus, the requestor has a right of access to information pertaining to herself that would otherwise be confidential under common-law privacy, and the department may not withhold any portion of the remaining information from this requestor under section 552.101 in conjunction with common-law privacy.

Some of the remaining information is subject to section 552.136 of the Government Code.² Section 552.136 provides, “Notwithstanding any other provision of [the Act], a credit card,

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 (1987), 480 (1987), 470 (1987).

debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the department must withhold the access code at issue, which we marked, under section 552.136 of the Government Code.³

In summary, with the exception of any information pertaining to the requestor, the department must withhold the dates of birth, driver identification numbers, names, addresses but not zip codes, e-mail addresses, and medical or disability information of the individuals in the marked information the department received from DPS under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code. The department must withhold the access code we marked under section 552.136 of the Government Code. The department must release the remaining information to this requestor.

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/be

Ref: ID# 925652

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ As our ruling is dispositive for this information, we need not address the department’s argument against its disclosure.