



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 31, 2022

Mr. Mark C. Kratovil
Assistant Criminal District Attorney
Tarrant County
401 West Belknap, 9th Floor
Fort Worth, Texas 76196-0201

OR2022-02806

Dear Mr. Kratovil:

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# 927489.

The Tarrant County Purchasing Department (the "department") received a request for certain information pertaining to a specified request for bids. Although the department takes no position regarding whether the submitted information is excepted from disclosure under the Act, the department informs us its release may implicate the proprietary interests of the following third parties: CTJ Maintenance, Inc.; Oriental Building Services, Inc.; and UBM Enterprise, Inc. Accordingly, the department states, and provides documentation showing, it notified these third parties of the request for information and of their right to submit arguments to this office. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information.

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any interested third party explaining why the information at issue should not be released. Thus, we have no basis to conclude any of the interested third parties have a protected proprietary interest in the submitted

information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Therefore, the department may not withhold the submitted information on the basis of any proprietary interest any interested third party may have in the information.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The 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.). Accordingly, the department must withhold the public citizens’ partial dates of birth within the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator’s or driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See Gov’t Code* § 552.130. Accordingly, the department must withhold the partial driver’s license number, expiration date, and issuing state within the remaining information 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.” *Id.* § 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). Accordingly, the department must withhold the insurance policy numbers within the remaining information under section 552.136 of the Government Code.

We note some of the remaining information at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *Open Records Decision No. 180 at 3* (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see Open Records Decision No. 109* (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so

¹ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481* (1987), *480* (1987), *470* (1987).

unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the department must withhold the public citizens' partial dates of birth within the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the partial driver's license number, expiration date, and issuing state within the remaining information under section 552.130 of the Government Code. The department must withhold the insurance policy numbers within the remaining information under section 552.136 of the Government Code. The department must release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law.²

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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/mo

Ref: ID# 927489

Enc. Submitted documents

c: Requestor
(w/o enclosures)

cc: 3 Third Parties
(w/o enclosures)

² We note the information being released contains partial social security numbers. 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).