



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 17, 2022

Ms. Dalia Flores
Paralegal
City of San Angelo
72 West College Avenue
San Angelo, Texas 76903

OR2022-07897

Dear Ms. Flores:

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# 936559 (City File No. P003361-12621).

The San Angelo Police Department (the "department") received a request for incident and call for service reports.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under the Act. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). You state you received the request for information on December 16, 2021. However, as of the date of this ruling, you have not

¹ As you have not submitted a copy of the request for information, we take our description of the information requested from the submitted information.

submitted to this office a copy of the written request for information. Accordingly, we conclude you failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). You claim sections 552.101 and 552.108 of the Government Code for the submitted information. As sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness we will address the applicability of these sections to the submitted information.² However, we find you have failed to establish a compelling reason to address your remaining claimed exception.

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.” Gov't Code § 552.101. This section encompasses 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 the requestor has a right of access to her own otherwise private information pursuant to section 552.023 of the Government Code and that information may not be withheld from the requestor under section 552.101 on the basis of common-law privacy. *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”); ORD 481 at 4 (privacy theories not implicated when individual requests information concerning herself).

You seek to withhold the entirety of some of the reports at issue 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

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).

be withheld on the basis of common-law privacy. Accordingly, the department may not withhold the entirety of the information at issue under section 552.101 of the Government Code on that basis. Nevertheless, we conclude some of the information at issue meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the date of birth belonging to the requestor, the department must withhold the remaining public citizen's date of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold any portion of the remaining information under section 552.101 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 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. *See* Gov't Code § 552.130. We note section 552.130 is designed to protect the privacy of individuals and the requestor may represent the owner of the vehicle at issue. Accordingly, the requestor may have a right of access to the motor vehicle record information at issue 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 information at issue belongs to the requestor, the department may not withhold the motor vehicle record information at issue under section 552.130 of the Government Code and must release this information to the requestor. However, to the extent the motor vehicle record information at issue does not belong to the requestor, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the department must: (1) withhold the date of birth not belonging the requestor and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the motor vehicle record information we have marked under section 552.130 of the Government Code to the extent the motor vehicle record information at issue does not belong to the requestor; and (3) 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

³ We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a); ORD 481 at 4. 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.

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/be

Ref: ID# 936559

Enc. Submitted documents

c: Requestor
(w/o enclosures)