



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 18, 2022

Mr. Steven L. Weathered
Counsel for the City of Seabrook
Ross, Banks, May, Cron, & Cavin, P.C.
7700 San Felipe Suite 550
Houston, Texas 77063

OR2022-07932

Dear Mr. Weathered:

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# 936947 (City's Reference: 2021-900).

The City of Seabrook (the "city"), which you represent, received a request for information pertaining to a specified incident involving the requestor's client.¹ You state you have released some information to the requestor, including the police officer's crash report pursuant to section 550.065(c-1) of the Transportation Code. *See* Transp. Code § 550.065(c-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.

The submitted information includes officer Texas Commission on Law Enforcement ("TCOLE") identification numbers. Section 552.002(a) of the Government defines "public information" as the following:

[I]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

¹ As you have not submitted a copy of the request for information for our review, we take our description from your brief to our office. Additionally, we note the city asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand the officer's TCOLE identification numbers are unique computer-generated numbers assigned to peace officers for identification in TCOLE's electronic database, and may be used as an access device number on the TCOLE website. Thus, we find the officer TCOLE numbers do not constitute public information under section 552.002 of the Government Code. Therefore, the submitted officer TCOLE numbers are not subject to the Act and the city is not required to release them.

Next, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. 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. Gov't Code § 552.301(e). You inform us the city received the request for information on December 15, 2021. However, as of the date of this letter, you have not submitted to this office a copy of the request for information. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). 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, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Because 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 information at issue.² However, we find the city has failed to establish a compelling reason to address its remaining exception.

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 section 730.004 of the Transportation Code, which provides, “[n]otwithstanding any other provision of law to the contrary, including chapter 552, Government Code, except as provided by sections 730.005-730.007, 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. Section 730.004 applies only to an “agency” that compiles or maintains motor vehicle records. *See id.* § 730.003(1). Upon review, we find the city has failed to establish the city compiles or maintains motor vehicle records for purposes of chapter 730. Therefore, we find you have failed to demonstrate section 730.004 applies to the city, and, thus, the city may not withhold any portion of the remaining 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. *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 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.). Upon review, however, we find you have failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

You state the city will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code.³ Section 552.130 of the Government Code provides 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 is excepted from public release. Gov't Code § 552.130(a). We note section

² The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

³ Section 552.130(c) of the Government Code 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).

552.130 protects personal privacy. Accordingly, the requestor has a right of access to her client's motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); Open Records Decision 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, with the exception of the information pertaining to requestor's client, which we marked for release, the city must withhold the motor vehicle recording information you marked and the additional information we marked under section 552.130 of the Government Code.

In summary, the submitted officer TCOLE numbers are not subject to the Act and the city is not required to release them. With the exception of the information pertaining to requestor's client, which we marked for release, the city must withhold the motor vehicle recording information you marked and the additional information we marked under section 552.130 of the Government Code. The city must release the remaining information.

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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/jxd

Ref: ID# 936947

Enc. Submitted documents

c: Requestor
(w/o enclosures)