



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 27, 2022

Mr. Albert E. Tovar
VIA Metropolitan Transit
Office of General Counsel
123 North Medina Street
San Antonio, Texas 78207

OR2022-11976

Dear Mr. Tovar:

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# 943422.

VIA Metropolitan Transit ("VIA") received a request for information pertaining to a specified solicitation. You state you have released some information. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code. You also claim release of the submitted information may implicate the proprietary interests of Gabriel, Roeder, Smith & Company ("GRS"). Accordingly, VIA states, and provides documentation showing, it notified GRS of the request for information and of the right to submit arguments to this office as to why the submitted information should not be released. *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 considered the exceptions you claim and reviewed the submitted information.

Initially, you state some of the submitted information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2022-06584 (2022). In that ruling, we determined VIA: (1) must withhold the public citizen's date of birth under section 552.101 of the Government Code; (2) may withhold the information you indicated under section 552.111 of the Government Code; (3) must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code; and (4) must release the remaining information. We have no indication there has been any change in the law, facts, or circumstances on which the

previous ruling was based. Accordingly, VIA may rely on Open Records Letter No. 2022-06584 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, 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) 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 GRS explaining why the submitted information should not be released. Therefore, we have no basis to conclude GRS has 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). Accordingly, VIA may not withhold the submitted information on the basis of any proprietary interest GRS may have in the 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." *Id.* § 552.101. Section 552.101 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. 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, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, VIA must withhold the date of birth you indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

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." Gov't Code § 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, VIA must withhold the submitted insurance policy numbers under section 552.136 of the Government Code.

In summary, VIA may rely on Open Records Letter No. 2022-06584 as a previous determination and withhold or release the identical information in accordance with that ruling. VIA must withhold the date of birth you indicated under section 552.101 of the

Government Code in conjunction with common-law privacy. VIA must withhold the submitted insurance policy numbers under section 552.136 of the Government Code. The remaining information must be released.

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,

Colin Henry
Attorney
Open Records Division

CEH/mo

Ref: ID# 943422

c: Requestor