



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 13, 2022

Ms. Nicole A. Corr
Counsel for the City of Colleyville
Wood & Banowsky, P.L.L.C.
5810 Long Prairie Road, Suite 700-220
Flower Mound, Texas 75028

OR2022-20174

Dear Ms. Corr:

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# 959104 (Ref. No. PD-22-0031).

The City of Colleyville (the "city"), which you represent, received a request for information related to a specified incident involving the requestor's client. You state you will withhold social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim some of the submitted information was not properly requested pursuant to section 1701.661 of the Occupations Code. You also claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you state some of the requested information consists of officers' body worn camera recordings. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661(a) provides:

A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

- (1) the date and approximate time of the recording;
- (2) the specific location where the recording occurred; and

¹ 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 id.* § 552.147(b).

(3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). In this instance, the requestor provides the requisite information under section 1701.661(a). As the body worn camera recording was properly requested pursuant to chapter 1701 of the Occupations Code, we will consider your arguments against its disclosure.

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 of the Government Code 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.). This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See Open Records Decision Nos. 600* (1992) (designation of beneficiary of employee’s retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). We note the requestor has a right of access to her client’s information pursuant to section 552.023 of the Government Code. *See Gov’t Code § 552.023(a)* (person or person’s authorized representative has special right of access to records that contain information relating to the person that are 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 individuals request information concerning themselves). Accordingly, with the exception of the date of birth pertaining to the requestor’s client, the city must withhold all audible and visible public citizens’ dates of birth, the information you marked, and the additional information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides 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 is excepted from public release. Gov’t Code § 552.130. We note, however, because section 552.130 is designed to protect the privacy of individuals, 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); *ORD 481* at 4. Thus, information belonging to the requestor’s client may not be withheld from the requestor under section 552.130 of

the Government Code. Accordingly, with the exception of the requestor's client's information, the city must withhold the motor vehicle record information it marked, and the additional information we marked and indicated under section 552.130.

In summary, with the exception of the date of birth pertaining to the requestor's client, the city must withhold all audible and visible public citizens' dates of birth, the information you marked, and the additional information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the requestor's client's information, the city must withhold the motor vehicle record information it marked, and the additional information we marked and indicated under section 552.130. The city must release the remaining information.

Finally, you ask this office to issue a previous determination permitting the department to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without first seeking a ruling from this office. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301 (a) of the Government Code). We note a previous determination has been issued by this office to the city and refer it to Open Records Letter No. 2021-24294 (2021). 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,

Chase D. Young
Assistant Attorney General
Open Records Division

CDY/mo

Ref: ID# 959104

Enc. Submitted documents

c: Requestor
(w/o enclosures)