



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 11, 2022

Mr. Joe R. Zapata
Administration Manager
City of Houston
1200 Travis Street, 10th Floor
Houston, Texas 77002-6000

OR2022-23927

Dear Mr. Zapata:

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# 965413 (Ref. No. P030173-051922).

The Houston Police Department (the "department") received a request for information pertaining to a specified motor vehicle accident involving the requestor's clients and the personnel file of a named department police officer. You state the department will release the call for service slip to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have not submitted information responsive to the portion of the present request seeking personnel records pertaining to the department police officer named in the request. Moreover, you do not inform us the department is releasing this information to the requestor. Although you state the department has submitted a representative sample of the requested information, we find the submitted information is not representative of all the types of information to which the requestor seeks access. Please be advised, this open records letter ruling applies only to the types of information the department has submitted for our review. This ruling does not authorize the department to withhold any information that is substantially different from the types of information you submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). Additionally, we note the Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision

Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). Accordingly, to the extent any information responsive to the portion of the request seeking personnel records pertaining to the named department police officer existed on the date the department received the request, we assume the department has released it to the requestor. If the department has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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. Section 552.101 encompasses information protected by other statutes, such as section 143.1214 of the Local Government Code, which provides, in relevant part:

(b) The department shall maintain an investigatory file that relates to a disciplinary action against a fire fighter or police officer that was overturned on appeal, or any document in the possession of the department that relates to a charge of misconduct against a fire fighter or police officer, regardless of whether the charge is sustained, only in a file created by the department for the department's use. The department may only release information in those investigatory files or documents relating to a charge of misconduct:

- (1) to another law enforcement agency or fire department;
- (2) to the office of a district or United States attorney; or
- (3) in accordance with Subsection (c).

(c) The department head or the department head's designee may forward a document that relates to disciplinary action against a fire fighter or police officer to the director or the director's designee for inclusion in the fire fighter's or police officer's personnel file maintained under Sections 143.089(a)-(f) only if:

- (1) disciplinary action was actually taken against the fire fighter or police officer;
- (2) the document shows the disciplinary action taken; and
- (3) the document includes at least a brief summary of the facts on which the disciplinary action was based.

Local Gov't Code § 143.1214(b)-(c). You state the City of Houston is a civil service city under chapter 143 of the Local Government Code. You also state the submitted information is maintained in the department's internal investigative files and relates to an investigation by the department of alleged misconduct by a department officer. You further state the information at issue is maintained in the department's investigatory file and is not part of

the officer's civil service personnel file. Furthermore, you state the requestor is not a representative from another law enforcement agency, a fire department, or the office of a district or United States attorney. *See id.* § 143.1214(b)(1)-(2). Accordingly, based on your representations and our review, with the exception of the information we have indicated for release, we conclude the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. However, we note the information we have indicated consists of scene photographs and a body worn camera recording from the specified accident, which are maintained independently from the police officer's internal file. In this instance, the requestor has specifically requested this information, which is maintained for law enforcement purposes separate and apart from any internal files. The department may not engraft the confidentiality afforded to records under section 143.1214 to records that exist independently of the internal files. Therefore, the information we have indicated is not confidential under section 143.1214 of the Local Government Code, and the department may not withhold it 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. *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.). However, we note the requestor has a right of access to information pertaining to his clients that would otherwise be confidential under common-law privacy. *See* Gov't Code § 552.023 (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 individual requests information concerning herself). Accordingly, with the exception of the dates of birth of the requestor's clients, the department must withhold all dates of birth within the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.¹ Gov't Code § 552.1175. Section 552.1175 applies, in part, to "current or honorably retired peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1); *see id.* § 552.003(1-b) (defining "honorably retired" for purposes of the Act). Section 552.1175 also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). The remaining information contains information

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, 480 (1987), 470 (1987).

that may be subject to section 552.1175. Accordingly, if the telephone number we have indicated relates to a current or honorably retired peace officer who elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, then the department must withhold it under section 552.1175 of the Government Code; however, to the extent the telephone number at issue is a cellular telephone number the department may withhold it only if a governmental body does not pay for the cellular telephone service.

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. We note section 552.130 is designed to protect the privacy of individuals. Thus, the requestor has a right of access to his clients' motor vehicle record information, and it may not be withheld from him under section 552.130. *See id.* § 552.023; ORD 481 at 4. Accordingly, with the exception of the motor vehicle record information pertaining to the requestor's clients, the department must withhold all audible and visible license plates, license plate numbers and states of issuance, registration stickers, vehicle identification numbers, driver's licenses, and driver's license information within the remaining information under section 552.130 of the Government Code.

In summary, with the exception of the information we have indicated for release, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. With the exception of the dates of birth of the requestor's clients, the department must withhold all dates of birth within the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. If the telephone number we have indicated relates to a current or honorably retired peace officer who elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, then the department must withhold it under section 552.1175 of the Government Code; however, to the extent the telephone number at issue is a cellular telephone number, the department may withhold it only if a governmental body does not pay for the cellular telephone service. With the exception of the motor vehicle record information pertaining to the requestor's clients, the department must withhold all audible and visible license plates, license plate numbers and states of issuance, registration stickers, vehicle identification numbers, driver's licenses, and driver's license information within the remaining information under section 552.130 of the Government Code. The department must release the remaining information to this requestor.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.

² As noted above, the requestor has a special right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a); ORD 481 at 4. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/jxd

Ref: ID# 965413

Enc. Submitted documents

c: Requestor
(w/o enclosures)