



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 20, 2022

Ms. Tessa K. Meredith
Counsel for the City of Aubrey
Messer, Fort & McDonald, PLLC
6371 Preston Road, Suite 200
Frisco, Texas 75034

OR2022-28911

Dear Ms. Meredith:

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# 972870 (ORR ID# AB063022SJ).

The City of Aubrey (the "city"), which you represent, received a request for information related to a specified incident. You claim portions of the submitted information are excepted from disclosure under section 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 a 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). Accordingly, the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. In addition, we find the submitted video recordings contain motor vehicle record information. You state the city lacks the technological capability to redact the motor vehicle record information from the recordings. Accordingly, the city must withhold the submitted video recordings in their entireties under section 552.130 of the Government Code.¹ *See* Open Records Decision No. 364 (1983).

¹ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this 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.” Gov’t Code § 552.101. This section 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. 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.). Upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold all public citizens’ dates 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 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 in conjunction with common-law privacy.

In summary, the city must: (1) withhold the information we have marked and the submitted video recordings in their entireties under section 552.130 of the Government Code; (2) withhold all public citizens’ dates of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) 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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/jm

Ref: ID# 972870

Enc. Submitted documents

c: Requestor
(w/o enclosures)