



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 27, 2022

Ms. Erin A. Higginbotham  
Counsel for the City of Liberty Hill  
Bojorquez Law Firm, P.C.  
11675 Jollyville Road, Suite 300  
Austin, Texas 78759

OR2022-39923

Dear Ms. Higginbotham:

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# 987618 (R000673-092922).

The City of Liberty Hill (the "city"), which you represent, received a request for information pertaining to a specified incident involving the requestor's client. You claim some of the submitted information is excepted from disclosure under sections 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 personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Because section 552.130 protects personal privacy, 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* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is 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). Upon review, we find the submitted video recording contains motor vehicle record information subject to section 552.130 that does not belong to the requestor's client. You state the city lacks the technological capability to redact the confidential information in the video recording at

issue. Accordingly, the city must withhold (1) the entirety of the submitted video recording, (2) the motor vehicle record information you marked, and (3) the additional information we marked under section 552.130 of the Government Code.<sup>1</sup> See Open Records Decision No. 364 (1983).

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 the doctrine of common-law privacy. *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.). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). We note the requestor has a right of access to her client’s otherwise private information, and it may not be withheld from her under common-law privacy. See *id.* § 552.023(a); ORD 481 at 4. Upon review, we conclude some of the submitted information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information protected by the federal Driver’s Privacy Protection Act of 1994 (the “DPPA”), section 2721 of title 18 of the United States Code. Section 2721 provides, in part:

(a) In general.—A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section[.]

...

(b) Permissible uses.—Personal information referred to in subsection (a) . . . may be disclosed as follows:

(1) For use by any government agency . . . in carrying out its functions[.]

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<sup>1</sup> As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

...

(13) For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains.

...

(c) Resale or redisclosure.—An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b)(11) or (12)). . . . Any authorized recipient (except a recipient under subsection (b)(11)) that resells or rediscloses personal information covered by this chapter must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

18 U.S.C. § 2721(a)(1), (b)(1), (13), (c). The DPPA defines “motor vehicle record,” in relevant part, as “any record that pertains to a motor vehicle operator’s permit . . . issued by a department of motor vehicles[.]” *Id.* § 2725(1). Section 2725 also defines personal information as “information that identifies an individual, including an individual’s photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver’s status.” *See id.* § 2725(3).

The city asserts the remaining information at issue contains personal information obtained from the Texas Department of Public Safety (“DPS”) that is protected under the DPPA. We note this office has concluded that the DPPA applies to information in the possession of DPS. Attorney General Opinion JC-0499 at 1 (2002). The city explains it obtained the personal information for use in carrying out its functions with regard to law enforcement. Based upon the city’s representations and our review, we find the city, in obtaining personal information from DPS to assist the city in carrying out its law enforcement functions, is an authorized recipient of personal information for purposes of section 2721(c). *See* 18 U.S.C. § 2721(b)(1) (providing that personal information may be disclosed by a state city of motor vehicles to any entity acting on behalf of a Federal, State, or local agency in carrying out its functions). Therefore, we find some of the remaining information at issue is personal information obtained from DPS by an authorized recipient and is confidential under section 2721 of title 18 of the United States Code. Accordingly, as we have no indication release of this information would be for a use permitted under section 2721(b), the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 2721(a) of title 18 of the United States Code. However, you have

failed to demonstrate any portion of the remaining information at issue is subject to section 2721(a), and the city may not withhold any portion of the remaining information at issue under section 552.101 on that basis.

In summary, the city must withhold (1) the entirety of the submitted video recording, (2) the motor vehicle record information you marked, and (3) the additional information we marked under section 552.130 of the Government Code. The city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 2721(a) of title 18 of the United States Code. The city must release the remaining information.<sup>2</sup>

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,

Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/jxd

Ref: ID# 987618

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup> We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the city receives another request for the same information from a different requestor, the city must again seek a decision from this office.