



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 27, 2022

Ms. Bridgette A. Begle
Counsel for the City of La Marque
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2022-39928

Dear Ms. Begle:

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# 992084 (Ref. No. LaMarque22-068).

The La Marque Police Department (the "department"), which you represent, received a request for a specified investigative file. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ 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). We note section 552.130 protects privacy interests. Thus, the requestor has a right of access to her client's motor vehicle record information. *See id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). In this instance, the requestor may have a right of access to some of the motor vehicle record information at issue under section 552.023 of the Government Code.

¹ We note, and you acknowledge, the department did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b). Nonetheless, because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

However, because we are unable to determine whether the information at issue belongs to the requestor's client, we must rule conditionally. To the extent the motor vehicle record information we have marked belongs to the requestor's client, she has a right of access under section 552.023 to this information, and the department may not withhold such information under section 552.130 from the requestor. To the extent the motor vehicle record information we have marked does not belong to the requestor's client, the department must withhold this information under section 552.130 of the Government Code. In either instance, we find the submitted video recordings contain motor vehicle record information not belonging to the requestor's client. You state the department lacks the technological capability to redact the motor vehicle record information from the recordings. Accordingly, the department must withhold the submitted video recordings in their entirety under section 552.130 of the Government Code.² See Open Records Decision No. 364 (1983).

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. This section 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 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 her client's otherwise private information pursuant to section 552.023 of the Government Code. See Gov't Code § 552.023(a); ORD 481 at 4. Upon review, we find the department must withhold the date of birth not belonging to the requestor's client under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the motor vehicle record information we have marked does not belong to the requestor's client, the department must withhold this information under section 552.130 of the Government Code. The department must withhold the submitted video recordings in their entirety under section 552.130 of the Government Code. The department must withhold the date of birth not belonging to the requestor's client under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information to this requestor.³

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 our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

³ 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. Therefore, 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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/jxd

Ref: ID# 992084

Enc. Submitted documents

c: Requestor
(w/o enclosures)