



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 29, 2015

Mr. Marc J. Schnall  
Counsel for the City of Selma  
Langley & Banack Incorporated  
745 East Mulberry, Suite 900  
San Antonio, Texas 78212-3166

OR2015-15443

Dear Mr. Schnall:

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# 575093.

The City of Selma (the "city"), which you represent, received a request for information pertaining to a specified incident. You state you have released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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. Section 552.101 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. You seek to withhold the dates of birth you have marked in the submitted information pursuant to common-law privacy. We note, however, the dates of birth of living members of the public are not protected by common-law privacy under section 552.101. See Open Records Decision No. 455 at 7 (1987) (home addresses, telephone numbers, and dates

of birth not private). Although you reference *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061 (Tex. App.—Austin, May 22, 2015, no pet. h.) (mem. op.), we note the time for filing a petition for review with the Texas Supreme Court has not expired. TEX. R. APP. P. 53.7. Therefore, we find the city has failed to demonstrate the information you have marked is highly intimate or embarrassing and of no legitimate public interest. Thus, the city may not withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). You state the information you have marked pertains to a case that concluded in a result other than conviction or deferred adjudication. Upon review, we find the city may withhold the information you have marked under section 552.108(a)(2) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. *Id.* § 552.130(a). Upon review, we agree the submitted video recording contains information subject to section 552.130 of the Government Code. You state the city does not have the technological capability to redact the motor vehicle record information from the recording at issue. Accordingly, the city must withhold the submitted video recording in its entirety under section 552.130 of the Government Code. *See Open Records Decision No. 364 (1983)*. Additionally, the city must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

In summary, the city may withhold the information you have marked under section 552.108(a)(2) of the Government Code. The city must withhold the submitted video recording in its entirety and the information you have marked under section 552.130 of the Government Code. The city must release the remaining information.<sup>1</sup>

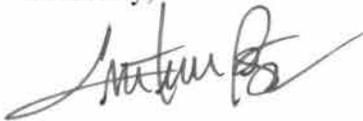
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<sup>1</sup>Pursuant to section 552.023 of the Government Code, the requestor has a special right of access to his motor vehicle record information being released. *See Gov't Code § 552.023(a)* ("person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the 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 himself). If the city receives a request for this information from a different requestor, the city is authorized to redact this information under section 552.130(c) without the necessity of seeking a decision from the attorney general. *See id.* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

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 [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cristian Rosas-Grillet', with a stylized flourish at the end.

Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/cbz

Ref: ID# 575093

Enc. Submitted documents

c: Requestor  
(w/o enclosures)