



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 15, 2015

Ms. Susan Camp-Lee  
Counsel for the City of Round Rock  
Sheets & Crossfield, P.C.  
309 East Main Street  
Round Rock, Texas 78664-5246

OR2015-21625

Dear Ms. Camp-Lee:

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# 583248.

The Round Rock Police Department (the "department"), which you represent, received a request for information pertaining to a specified incident. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.136 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 information subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Act of June 1, 2015, 84th Leg., R.S., ch. 936, § 1, 2015 Tex. Sess. Law Serv. 3256 (Vernon) (to be codified at Transp. Code § 550.065(a)(1)). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. Transp. Code §§ 550.061 (operator's accident report), .062 (officer's accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b).

However, a governmental entity may release an accident report in accordance with subsections (c) and (c-1). Act of June 1, 2015, 84th Leg., R.S., ch. 936, § 1, 2015 Tex. Sess. Law Serv. 3256, 3256-57 (Vernon) (to be codified at Transp. Code § 550.065(c), (c-1)). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c). Here, the requestor is a person listed under section 550.065(c). Thus, the department must release the accident report to the requestor pursuant to section 550.065(c).

Section 552.101 of the Government Code also 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). A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note records relating to routine traffic violations are not considered criminal history information. *Cf. Gov't Code* § 411.082 (2)(B) (criminal history record information does not include driving record information). Further, active warrant information or other information relating to an individual's current involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. See *id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). We note the remaining information also contains dates of birth. In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *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.). The supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.<sup>1</sup> *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public

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<sup>1</sup>Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." *Gov't Code* § 552.102(a).

citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at \*3.

Upon review, we find the dates of birth you have marked and the additional information we have marked satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the department may generally withhold the dates of birth you have marked and the additional information we have marked information under section 552.101 of the Government Code in conjunction with common-law privacy. In this instance, however, the requestor may be the authorized representative of one of the individuals whose information we have marked. Thus, the requestor may have a right of access to information pertaining to the individual that would otherwise be confidential under common-law privacy. Section 552.023(a) states "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." Gov't Code § 552.023; *see* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, if the requestor is acting as the authorized representative of the individual whose information we have marked, then the department may not withhold any portion of the marked information pertaining to the individual at issue from this requestor under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of the individual, then the department must withhold the information you have marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, the department has failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the department may not withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides 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 is excepted from public release. Gov't Code § 552.130(a). Upon review, we find the department must generally withhold the motor vehicle record information you have marked and the additional motor vehicle record information we have marked under section 552.130 of the Government Code. We note section 552.130 protects privacy interests. As noted above, because the requestor may be the authorized representative of one of the individuals whose motor vehicle record information is at issue, he may have a right of access to this individual's motor vehicle record information. Thus, if the requestor is acting as the authorized representative of the individual at issue, then he has a right of access to the marked motor vehicle record information pertaining to his client pursuant to section 552.023, and this information may not be withheld from him under section 552.130. If the requestor is not acting as the authorized representative of the individual at issue, then the department must withhold the motor vehicle

record information you have marked, and the additional motor vehicle record information we have marked, under section 552.130.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. As noted above, the requestor may be the authorized representative of one of the individuals whose insurance policy number we have marked. Thus, he may have a right of access to that individual’s marked insurance policy number. *See id.* § 552.023; ORD 481. Accordingly, if the requestor is acting as the authorized representative of that individual, then the department may not withhold that individual’s marked information from this requestor under section 552.136. If the requestor is not acting as the authorized representative of that individual, then the department must withhold the information you have marked, and the additional information we have marked, under section 552.136.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *Id.* § 552.147. Upon review, we find the department may withhold the social security numbers you have marked under section 552.147 of the Government Code.

In summary, the department must release the accident report to the requestor pursuant to section 550.065(c) of the Transportation Code. To the extent the requestor does not have a right of access under section 552.023 of the Government Code to the marked information, the department must withhold the information you have marked and the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, section 552.130 of the Government Code, and section 552.136 of the Government Code. The department may withhold the social security numbers you have marked under section 552.147 of the Government Code. The department 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.

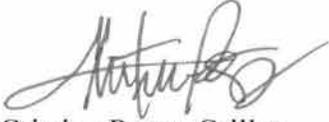
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <http://www.texasattorneygeneral.gov/open/>

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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 No. 481 at 4. Thus, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

[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,



Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/cbz

Ref: ID# 583248

Enc. Submitted documents

c: Requestor  
(w/o enclosures)