



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 2, 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

OR2015-22934

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# 585406.

The Round Rock Police Department (the "department"), which you represent, received a request for information related to a specified incident. You claim the submitted information is 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 "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 of the Government Code encompasses the doctrine of common-law privacy. Common-law privacy 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. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See, e.g.*, Open Records Decision Nos. 545 (1990) (common-law

privacy protects mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy).

We note the submitted information contains the dates of birth of public citizens. 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.¹ *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 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.

We note some of the information at issue pertains to the requestor's client, who has a special right of access under section 552.023 of the Government Code to the information pertaining to his client that would otherwise be private. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are 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). Thus, the information pertaining to the requestor's client may not be withheld from him under common-law privacy.

Accordingly, the department must withhold the remaining public citizen's date of birth within the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the information you have marked 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 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(a). The department must withhold the motor vehicle record information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code.

¹Section 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).

Section 552.136(b) 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.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Thus, the department must withhold the information you have marked under section 552.136 of the Government Code.

In summary, the department must withhold the public citizen’s date of birth within the submitted information that does not pertain to the requestor’s client under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code. The department must withhold the information you have marked under section 552.136 of the Government Code. The department must release the remaining information.²

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, 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,



Joseph Behnke
Assistant Attorney General
Open Records Division

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²We note the requestor has a right of access beyond that of the general public to some of the information being released that pertains to his client, which is normally excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy and sections 552.130 and 552.136 of the Government Code. *See* Gov’t Code § 552.023(a); ORD 481 at 4.

Ref: ID# 585406

Enc. Submitted documents

c: Requestor
(w/o enclosures)