



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 18, 2016

Ms. Victoria D. Honey  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, Third Floor  
Fort Worth, Texas 76102

OR2016-06334

Dear Ms. Honey:

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# 602072 (PIR# W048202).

The City of Fort Worth (the "city") received a request for a specified incident report. You state you will redact motor vehicle record information under section 552.130(c) of the Government Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 of the Government Code 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. This office has also concluded some kinds of medical information

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<sup>1</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 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).

are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). Moreover, 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. *Indus. Found.*, 540 S.W.2d at 682. 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>2</sup> *Tex. 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.

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, you seek to withhold the entirety of the submitted information under section 552.101 in conjunction with common-law privacy. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy. Accordingly, the city may not withhold the entirety of the information at issue under section 552.101 of the Government Code on that basis. However, upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. In this instance, we note the requestor indicates he may be acting as the authorized representative of the individual whose information is at issue. In this case, the requestor has a right of access to the information pertaining to this individual that would otherwise be confidential under common-law privacy. See Gov't Code § 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 individual requests information concerning himself). Accordingly, if the requestor is acting as the authorized representative of this individual, then the city may not withhold the information at issue from the requestor under section 552.101 of the Government Code on the basis of common-law privacy. However, if the requestor is not acting as this individual's authorized representative, then the city must withhold the information you and we marked under section 552.101 in conjunction with common-law privacy.

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<sup>2</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).

As previously noted, you state the city will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code. *See* Gov't Code § 552.130(c). However, section 552.130 protects personal privacy. We note the requestor may have a right of access to the information you have marked for redaction as the individual's authorized representative under section 552.023. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, if the requestor has a right of access to the marked motor vehicle record information under section 552.023 of the Government Code, then this information may not be withheld from this requestor under section 552.130. If the requestor does not have a right of access to the information at issue under section 552.023, the city must withhold the motor vehicle record information you have marked pursuant to section 552.130 of the Government Code.

In summary, if the requestor is acting as the authorized representative of the individual whose information is at issue, the city must release the submitted information. If the requestor is not acting as the authorized representative of the individual at issue, then the city must (1) withhold the information you and we marked under section 552.101 of the Government Code in conjunction with common-law privacy, (2) withhold the motor vehicle information you marked under section 552.130 of the Government Code, and (3) release the remaining information.<sup>3</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/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,



Matthew Taylor  
Assistant Attorney General  
Open Records Division

MT/dls

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<sup>3</sup>We note the requestor also has a special right of access to the information being released that pertains to himself. *See* Gov't Code § 552.023(a); ORD 481 at 4.

Ref: ID# 602072

Enc. Submitted documents

c: Requestor  
(w/o enclosures)