



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 2, 2016

Mr. Peter G. Smith  
City Attorney  
City of Richardson  
P.O. Box 831078  
Richardson, Texas 75038-1078

OR2016-09806

Dear Mr. Smith:

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# 607914.

The Richardson Police Department (the "department") received a request for information concerning a named individual and a specified incident. You state the department released some of the information. You claim the remaining information is excepted from disclosure under sections 552.101 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses 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. *See id.* at 681–82. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation. Id.* at 683. This office has found personal financial information that does not relate to a financial transaction between an individual and a governmental body is protected by common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Furthermore, in considering whether a member of the public'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> *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 members of the public, and thus, dates of birth of members of the public are also protected by common-law privacy under section 552.101 of the Government Code. *City of Dallas*, 2015 WL 3394061, at \*3. We note the requestor is an authorized representative of the named individual and has a special right of access to private information concerning that individual. *See id.* § 552.023(a), (b) (individual has special right of access to information that relates to himself and is protected by laws intended to protect his privacy interests, and governmental body may not deny access on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (privacy theories not implicated when individual requests information concerning himself). Accordingly, the department may not withhold the information we marked for release that relates to the named individual under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the remaining dates of birth of members of the public and the financial information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit and a motor vehicle title or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a). We note section 552.130 is intended to protect individual privacy interests, so the requestor in this case has a right of access to the named individual's motor vehicle record information. *Id.* § 552.023(a), (b). Accordingly, the department may not withhold the motor vehicle record information we marked for release that relates to the named individual under section 552.130 of the Government Code. However, the department must withhold the motor vehicle record information you marked and the information we marked under section 552.130 of the Government Code. The remaining information at issue does not consist of motor vehicle record information and the department may not withhold it under section 552.130 of the Government Code.

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.” *Id.* § 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. Accordingly, the department must withhold the insurance policy number we marked under section 552.136 of the Government Code.

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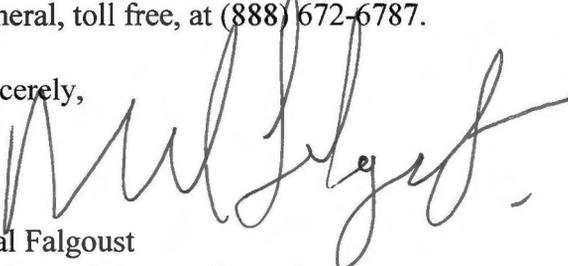
<sup>1</sup>Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov't Code § 552.102(a).

In summary, the department must withhold the dates of birth of members of the public, except for the named individual's, and the financial information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information you marked, except for the named individual's, and the information we marked under section 552.130 of the Government Code. The department must withhold the insurance policy number we marked under section 552.136 of the Government Code. The department must release the remaining information.

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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/bhf

Ref: ID# 607914

Enc. Submitted documents

c: Requestor  
(w/o enclosures)