



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 6, 2016

Ms. Captoria Brown
Paralegal
Office of the City Attorney
City of Carrollton
1945 East Jackson Road
Carrollton, Texas 75006

OR2016-15276

Dear Ms. Brown:

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# 617336 (City IDs: 7310 & 7369).

The City of Carrollton (the "city") received two requests from different requestors for all information related to incidents pertaining to a specified location for a specified period of time. You state you have released some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code.¹ 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 made confidential by other

¹Although you raise section 552.108 in conjunction with section 418.182, we note section 552.108 does not encompass other exceptions in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). We assume, based on your arguments, that you intended to raise section 552.101 in conjunction with section 418.182 of the Government Code. Furthermore, although you raise section 552.108, you submit no arguments to support this claim. Therefore, we assume you have withdrawn your claim section 552.108 applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

statutes, such as section 418.182 of the Government Code. Section 418.182 was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (“HSA”). Section 418.182 provides in part:

(a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Gov’t Code § 418.182. The fact that information may be related to a governmental body’s security concerns does not make such information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any confidentiality provision, a governmental body asserting section 418.182 must adequately explain how the responsive information falls within the scope of the statute. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). You have marked the numerical gate codes of a shooting range, along with other information, you state are confidential under section 418.182. You state the gate codes are maintained specifically “for the purpose of protecting the facility security entrance onto [the] property.” Based on your representation and our review, we find the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with 418.182 of the Government Code. However, you made no arguments explaining how the remaining information relates to the specifications, operating procedures, or location of a security system used to protect public or private property from terrorism or related criminal activity. Therefore, the city may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code.

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). Furthermore, 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.² *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. Thus, the city must withhold the information we have marked, and must generally withhold the public citizens' dates of birth you 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 city must generally withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

Section 552.147 of the Government Code provides, "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. Accordingly, the city may generally withhold the social security numbers you marked under section 552.147 of the Government Code.

However, we note the date of birth, motor vehicle record information, and social security number of the second requestor is contained within the submitted documents. We note common-law privacy and sections 552.130 and 552.147 protect personal privacy. Thus, the requestor has a right of access to his date of birth, motor vehicle record information, and social security number under section 552.023 of the Government Code. *See id.* § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to 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 herself). Accordingly, the city may not withhold the second requestor's information from him under section 552.101 on the basis of common-law privacy, or under sections 552.130 and 552.147 of the Government Code.

²Section 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 city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with 418.182 of the Government Code. The city must withhold the information we have marked, and must generally withhold the public citizens' dates of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must generally withhold the motor vehicle record information you marked under section 552.130 of the Government Code. The city may generally withhold the social security numbers you marked under section 552.147 of the Government Code. However, the city may not withhold the date of birth, motor vehicle information, and social security number pertaining to the second requestor from the second requestor. The city 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, 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,



Kavid Singh
Assistant Attorney General
Open Records Division

KVS/som

Ref: ID# 617336

Enc. Submitted documents

c: Requestor
(w/o enclosures)