



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 31, 2016

Ms. Heather Silver
Assistant City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2016-19678

Dear Ms. Silver:

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# 624647.

The City of Dallas (the "city") received a request for all documentation pertaining to a specified motor vehicle accident. You state you will redact the requested information pursuant to the previous determination in Open Records Letter No. 2011-18466 (2011).¹ You claim some of the submitted information is excepted from disclosure under sections 552.130 and 552.136 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

¹Open Records Letter No. 2011-18466 is a previous determination issued to the city's police department authorizing it to withhold the addresses of 911 callers furnished by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code without the necessity of requesting an attorney general's decision.

²Although you do not raise section 552.136 of the Government Code in your brief, we understand you to raise this exception based on your markings.

³We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”⁴ Gov’t Code § 552.101. Section 552.101 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 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 Open Records Decision Nos. 600 (1992) (personal financial information includes choice of a particular insurance carrier). 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.⁵ *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. Upon review, we note the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the information we have marked and the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy.

Some of the remaining responsive information may be subject to section 552.1175 of the Government Code. Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. See Gov’t Code § 552.1175. Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(1). Some of the remaining responsive information, which we have marked, relates to a peace officer. Accordingly, if the officer whose information is at issue elects to restrict access to his information in accordance with section 552.1175(b), the city must withhold the information

⁴The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁵Section 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).

we have marked under section 552.1175 of the Government Code. Conversely, if the officer whose information is at issue does not elect to restrict access to his information in accordance with section 552.1175(b), then the information we have marked may not be withheld under section 552.1175.

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 id.* § 552.130. Accordingly, the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. However, we find you have failed to demonstrate any of the remaining information at issue is subject to section 552.130. Thus, the city may not withhold any of the remaining information at issue 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"). We understand the employee identification number you marked is used in conjunction with one additional digit to access a credit union bank account. Thus, the city must withhold the employee identification number you marked under section 552.136 of the Government Code. Additionally, we notice the submitted information contains insurance policy numbers. This office has determined an insurance policy number is an access device number for the purposes of section 552.136. *See Open Records Decision No. 684 (2009)*. Upon review, we find the city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. However, we find you have failed to demonstrate any of the remaining information at issue is subject to section 552.136. Thus, the city may not withhold any of the remaining information at issue under section 552.136 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the officer whose information is at issue elects to restrict access to his information in accordance with section 552.1175(b), the city must withhold the information we have marked under section 552.1175 of the Government Code. The city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The city must withhold the employee identification numbers and insurance policy numbers we have marked under section 552.136 of the Government Code. 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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/dls

Ref: ID# 624647

Enc. Submitted documents

c: Requestor
(w/o enclosures)