



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 9, 2016

Ms. Delietrice Henry
Open Records Assistant
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2016-20415

Dear Ms. Henry:

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# 628501 (ORR# KALN071416 and KALN080816).

The Plano Police Department (the "department") received two requests from the same requestor for records involving the requestor at a specified address, including records of two specified incidents. You state the department has released some responsive information. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2016-08044 (2016). In that ruling, we determined, in part, the department (1) must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) must withhold the motor vehicle record information we marked

¹We note the department did not comply with section 552.301 of the Government Code with respect to some of the submitted information. *See* Gov't Code § 552.301(e). Nevertheless, because sections 552.101 and 552.130 make information confidential and thus, can provide compelling reasons to overcome the presumption of openness, we will consider these exceptions for the information at issue. *See id.* §§ 552.007, .302, .352.

under section 552.130 of the Government Code; and (3) must release the remaining information to the requestor. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed.² Accordingly, to the extent the submitted information is identical to the information previously submitted and ruled on by this office, we conclude the department must continue to rely on Open Records Letter No. 2016-08044 as a previous determination and withhold the information in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination). To the extent the submitted information is not subject to Open Records Letter No. 2016-08044, we will address the department's argument against release of 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 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). 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.³ *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. However, we note the requestor has a special right of access to her own private information and to her children's private information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(b); ORD 481 at 4. Upon review, we find the information we have

²We note the requestor in that case was the authorized representative of the requestor in the present case. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds 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).

³Section 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).

marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Therefore, the department may not withhold any of the remaining information under section 552.101 of the Government Code on this basis.

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.⁴ *See* Gov't Code § 552.130(a). We note section 552.130 protects personal privacy. Thus, the requestor has a right of access to the requestor's own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Therefore, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code, unless it pertains to the requestor.

In summary, to the extent the submitted information is identical to the information in Open Records Letter No. 2016-08044, the department must withhold the information in accordance with that ruling. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code, unless it pertains to the requestor. The remaining information must be released.⁵

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

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁵We note the requestor has a special right of access to some of the information being released. *See* Gov't Code § 552.023(b); ORD 481 at 4. Thus, if the department receives another request for this information from a different requestor, then the department must again seek a decision from this office.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brian E. Berger', written in a cursive style.

Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 628501

Enc. Submitted documents

c: Requestor
(w/o enclosures)