



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 18, 2012

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2012-14851

Dear Ms. Middlebrooks:

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# 465331 (DPD PIR No. 2012-07985).

The Dallas Police Department (the "department") received a request for report numbers 160459-Z and 162026-Z. You claim the submitted 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 representative sample of information.¹

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 statutes. You argue the marked date of birth is excepted from disclosure under section 552.101 in conjunction with section 521.051 of the Business and Commerce Code. Section 521.051 of the Business and Commerce Code provides as follows:

¹We assume the "representative sample" of information 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.

(a) A person may not obtain, possess, transfer, or use personal identifying information of another person without the other person's consent and with intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the other person's name.

Bus. & Comm. Code § 521.051(a) (formerly Bus. & Comm. Code § 48.101(a)). "Personal identifying information" means "information that alone or in conjunction with other information identifies an individual" and includes an individual's date of birth. *Id.* § 521.002(a)(1)(A). You assert the marked date of birth meets the definition of "personal identifying information" under section 521.002(a)(1) of the Business and Commerce Code. *See id.* § 521.002(a)(1). We note section 521.051(a) of the Business and Commerce Code does not prohibit the transfer of personal identifying information of another person unless the transfer is made with the intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the other person's name without that person's consent. *See id.* § 521.051(a). In this instance, the department's release of the information at issue would be for the purpose of complying with the Act, and not "with intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value[.]" *See id.* Therefore, section 521.051(a) of the Business and Commerce Code does not prohibit the department from transferring the requested information. Accordingly, the department may not withhold the marked date of birth under section 552.101 of the Government Code in conjunction with section 521.051 of the Business and Commerce Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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 established. *Id.* at 681-82. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. We note the dates of birth of members of the public are not excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 at 7 (1987) (home addresses, telephone numbers, dates of birth not protected under privacy).

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where the requestor knows the identity of the individual at issue and 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 information at issue may not be withheld in its entirety under common-law privacy. However, upon review, we find portions of the submitted information,

which we have marked, are highly intimate or embarrassing and of no legitimate public interest. The department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the department has failed to demonstrate the remaining information at issue is intimate or embarrassing and of no legitimate public interest. Therefore, the department may not withhold the remaining information you have 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 title or registration issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a)(2). We find the department must withhold the information you have marked under section 552.130 of the Government Code.²

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the information you have marked under section 552.130 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett
Assistant Attorney General
Open Records Division

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²We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 465331

Enc. Submitted documents

c: Requestor
(w/o enclosures)