



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 20, 2015

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

OR2015-17374

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# 576122 (City ID No. 5194).

The Carrollton Police Department (the "department") received a request for police reports and written statements pertaining to a specified investigation. 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 information.

Initially, we note you have marked some of the submitted information as not responsive to the present request for information. However, we note a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). The requestor seeks written statements pertaining to the investigation. Upon review, we find the information at issue is responsive to the present request. Accordingly, we will address your arguments under sections 552.101 and 552.130 of the Government Code for the information at issue.

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 highly intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. However, because “the right of privacy is purely personal,” that right “terminates upon the death of the person whose privacy is invaded.” *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded” (quoting RESTATEMENT (SECOND) OF TORTS § 652I (1977)); Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 (1981) (“the right of privacy is personal and lapses upon death”). Thus, information pertaining solely to a deceased individual may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. We note dates of birth of members of the public are generally not highly intimate or embarrassing. *See* Open Records Decision No. 455 at 7 (1987) (home addresses, telephone numbers, dates of birth not protected under privacy).

Upon review, we find some of the submitted information satisfies 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 you have not demonstrated how any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Although you reference *Paxton, v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061 (Tex. App.—Austin, May 22, 2015, pet. filed) (mem. op.), we note a petition for review was filed with the Texas Supreme Court on July 29, 2015. Thus, the remaining information may not be withheld under section 552.101 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). Accordingly, the department must withhold the motor vehicle record information you have marked, and the additional information we have marked, under section 552.130 of the Government Code.

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. The department must also withhold the motor vehicle record information you have marked, and

the additional information we 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.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,



Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/dls

Ref: ID# 576122

Enc. Submitted documents

c: Requestor  
(w/o enclosures)