



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 5, 2015

Mr. Bruce W. Green  
City Attorney  
City of Lufkin  
P.O. Drawer 190  
Lufkin, Texas 75902-0190

OR2015-20812

Dear Mr. Green:

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# 581802.

The City of Lufkin (the "city") received a request for all audio and video footage recorded for a specified time period by the in-unit camera and microphone and the officer-worn microphone pertaining to routine traffic stops for all certified peace officers employed by the city's police department for a specified time frame, excluding a specified stop involving the requestor.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.130 of the Government Code.<sup>2</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>3</sup> Additionally, we have received and considered comments submitted by the requestor. *See* Gov't Code § 552.304

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<sup>1</sup>You state, and submit supporting documentation demonstrating, the requestor amended his request and the city sought and received clarification of the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

<sup>2</sup>Although you raise section 552.101 of the Government Code in conjunction with section 552.130 of the Government Code, we note section 552.101 does not encompass other exceptions in the Act.

<sup>3</sup>We assume 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.

(interested party may submit comments stating why information should or should not be released).

Initially, you contend compliance with the request is “not feasible or will result in substantial interference with the ongoing operations of the [city’s police department].” Additionally, you state the city cannot determine which audio and video recordings are considered “routine traffic stops” for purposes of this request. We note, however, a governmental body may not refuse to comply with the requirements of the Act on the ground of administrative inconvenience. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S. W .2d 668, 685 (Tex. 1976); *see also* Open Records Decision No. 497 at 4 (1988) (fact that submitting copies for review may be burdensome does not relieve governmental body of its responsibility to do so). We also note a governmental body has a duty to make a good-faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990). In this instance, you have submitted information you believe is responsive to the request for audio and visual recordings pertaining to “routine traffic stops” and have made arguments against disclosure of this information. Thus, we assume the city has made a good-faith effort to relate this request to information the city holds, and we will address the applicability of your arguments to the submitted information. We note, however, section 552.222 of the Government Code provides that if a request for information is unclear, a governmental body may ask the requestor to clarify the request. *See* Gov’t Code § 522.222; *see also* *City of Dallas v. Abbott*, 304 S. W .3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Next, you cite section 552.228(b) of the Government Code for your request to withhold information and state the city does not have the technological capability to produce a copy of the requested information in the requested medium. Section 552.228(b) provides:

(b) If public information exists in an electronic or magnetic medium, the requestor may request a copy in an electronic medium, such as on diskette or on magnetic tape. A governmental body shall provide a copy in the requested medium if:

- (1) the governmental body has the technological ability to produce a copy of the requested information in the requested medium;
- (2) the governmental body is not required to purchase any software or hardware to accommodate the request; and

(3) provision of a copy of the information in the requested medium will not violate the terms of any copyright agreement between the governmental body and a third party.

Gov't Code § 552.228(b). Section 552.228(b) applies when the requestor requests information be provided to him in a specified medium, such as diskette or magnetic tape. *See id.* In this instance, while the requestor seeks the copies of audio and video recordings, he does not specify the requested information be provided in a particular medium. Additionally, we note the city has submitted copies of audio and video recordings on a compact disk for our review and did so before the purchase of any software or hardware to accommodate the request. Lastly, you provide no representations as to whether the provision of a copy of the information will violate the terms of any copyright agreement between the city and a third party. Thus, based on our review, we find section 552.228(b) is not applicable in this instance. Accordingly, we will address your argument against disclosure of the submitted information.

You assert the submitted video recordings contain motor vehicle record information that is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from disclosure 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.* Upon review, we find the submitted video recordings contain confidential motor vehicle record information subject to section 552.130. In your initial brief to this office, you state the city does not have the technological capability to redact the motor vehicle record information from the recordings. However, in subsequent correspondence to this office, you state the city now has the technological capability to redact the information from the recordings. Accordingly, we conclude the city must withhold the license plate images, license plate numbers, and driver's license numbers on the submitted recordings under section 552.130 of the Government Code. The remaining information on the recordings does not consist of information that is subject to section 552.130 and it may not be withheld on that basis.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>4</sup> Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. *Id.* 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

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<sup>4</sup>The 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).*

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.<sup>5</sup> *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 all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold the license plate images, license plate numbers, and driver's license numbers on the submitted recordings under section 552.130 of the Government Code. The city must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. 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](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,



Nicole Thomas  
Assistant Attorney General  
Open Records Division

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<sup>5</sup>Section 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).

Ref: ID# 581802

Enc. Submitted documents

c: Requestor  
(w/o enclosures)