



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 12, 2015

Ms. Amanda Pell
Open Records Specialist
The City of Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2015-23860

Dear Ms. Pell:

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# 592830.

The Baytown Police Department (the "department") received a request for a specified incident report. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.1175, 552.130, and 552.152 of the Government Code.¹ We have considered the claimed exceptions and reviewed the submitted information.

We note that the submitted information contains dates of birth excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 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 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 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

¹Although you raise section 552.117 of the Government Code for information pertaining to peace officers, we note section 552.1175 is the proper exception to raise for information held in a non-employment context.

(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.² *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. Thus, the department must withhold the date of birth you have marked under section 552.101 of the Government Code.

Section 552.1175 of the Government Code 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. We understand you have marked the home address of a department officer. Therefore, the department must withhold this information under section 552.1175 if the officer at issue elects to restrict access to them in accordance with section 552.1175(b) of the Government Code. However, the department may not withhold this information under section 552.1175 if the officer does not elect to restrict access to this information in accordance with section 552.1175(b).

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. We agree the department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

Section 552.152 of the Government Code provides the following:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. The department states the information you have marked under section 552.152 relates to a special operations and undercover police officer. The department also asserts release of this information would subject the officer to a substantial threat of physical harm. Based on these representations and our review, we conclude the department has demonstrated release of the information at issue would subject the officer to a substantial

²Section 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).

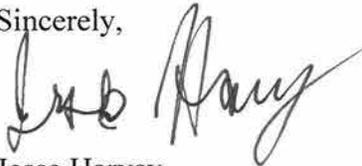
threat of physical harm. Therefore, the department must withhold the information you have marked under section 552.152 of the Government Code.

To conclude, the department must withhold the home address of the department officer you have marked under section 552.1175 of the Government Code if the officer at issue elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code. The department must also withhold the information you have marked under sections 552.101, 552.130, and 552.152 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, 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,



Jesse Harvey
Assistant Attorney General
Open Records Division

JH/bhf

Ref: ID# 592830

Enc. Submitted documents

c: Requestor
(w/o enclosures)