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ATTORNEY GENERAL OF TEXAS

November 13, 2015

Ms. Aimee Alcorn
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2015-23906

Dear Ms. Alcorn:

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# 588542 (CCPD File No. LNex29).

The Corpus Christi Police Department (the "department") received a request for information pertaining to a specified incident. We understand the department will redact information pursuant to section 552.147(b) of the Government Code and the previous determination issued to the department in Open Records Letter No. 2011-17207 (2011).¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.152 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting an attorney general decision under the Act. *See* Gov't Code § 552.147(b). Open Records Letter No. 2011-17207 authorizes the department to withhold a Federal Bureau of Investigation number under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code without requesting a decision from this office.

²Although you do not raise section 552.130 of the Government Code in the brief, we understand you to raise this exception based on your markings.

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 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). However, we note the public has a legitimate interest in knowing the general details of a crime. *See generally* *Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (5th Cir. 1994))); *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (public has legitimate interest in details of crime and police efforts to combat crime in community).

Further, 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. *Indus. Found.*, 540 S.W.2d 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 (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 *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.

Upon review, we find that, although the information you have marked may be highly intimate or embarrassing, the public has a legitimate interest in the information. Therefore, the department may not withhold any of the information you have marked under section 552.101 of the Government Code on this basis. Nevertheless, the department must generally withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note the requestor may be the authorized representative of an individual whose date of birth is at issue. Thus, the requestor may have a right of access to this information pursuant to section 552.023 of the Government

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).

Code. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, if the requestor is the authorized representative of an individual whose date of birth is at issue, then the department may not withhold the individual's date of birth under section 552.101 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. *See* Gov't Code § 552.130(a). The department must generally withhold the information you have marked under section 552.130 of the Government Code. However, as previously noted, the requestor may be the authorized representative of one of the individuals whose motor vehicle record information is at issue. Because section 552.130 protects personal privacy, if the requestor is the authorized representative of the individual, then the requestor has a right of access to the individual's motor vehicle record information pursuant to section 552.023. *See id.* § 552.023(a); ORD 481 at 4. In that instance, the department may not withhold the individual's motor vehicle record information under section 552.130.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] 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. You seek to withhold the identifying information of an undercover officer. You represent the release of the undercover officer's identity would subject the officer to a substantial threat of physical harm. Therefore, we find section 552.152 is applicable to the identity of the undercover officer. Accordingly, the department must withhold the identifying information of the undercover officer, which you have marked, under section 552.152 of the Government Code.

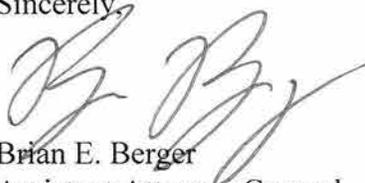
In summary, the department must generally withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is the authorized representative of an individual whose date of birth is at issue, then the department may not withhold the individual's date of birth under section 552.101 on this basis. The department must generally withhold the information you have marked under section 552.130 of the Government Code. However, if the requestor is

the authorized representative of the individual whose motor vehicle record is at issue, then the department may not withhold the individual's motor vehicle record information under section 552.130. The department must withhold the identifying information of the undercover officer, which you have marked, under section 552.152 of the Government Code. The remaining information must be released.⁴

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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 588542

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the requestor may have a special right of access to some of the information being released. See Gov't Code § 552.023(a); ORD 481 at 4. In this event, if the department receives another request for this information from a different requestor, then the department should again seek a decision from this office. See Gov't Code §§ 552.301(a), .302.