KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 17, 2015

Ms. Victoria D. Honey
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2015-24123

Dear Ms. Honey:

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# 587401 (PIR# W045349).

The City of Forth Worth (the "city") received a request for all information pertaining to two specified incidents related to the requestor and another named individual. You claim some of 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.

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 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). 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 (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.[1] *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. Upon review, we find the information the city has marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation.* Accordingly, the city must withhold the information it marked under section 552.101 of the Government Code in conjunction with common-law privacy.[2]

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by this state or another state or country. Gov't Code § 552.130(a)(1), (2). Accordingly, the city must withhold the motor vehicle record information you have marked, and the license plate number contained in the 911 audio, under section 552.130 of the Government Code.

In summary, the city must withhold the information it marked under section 552.101 in conjunction with common-law privacy. The city also must withhold the information it marked and the information we have indicated under section 552.130 of the Government Code. The city must release the remaining information.[3]

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[1]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).

[2]We note the requestor has a right of access to her own birth date information. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves).

[3] We note the remaining information contains the named individual's social security number. Section 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 a decision from this office under the Act. *See* Gov't Code § 552.147(b). We also note the requestor has a special right of access to some of the information being released in this instance. *See id.* § 552.023(a). Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.

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,

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/dls

Ref: ID# 587401

Enc. Submitted documents

c: Requestor
(w/o enclosures)