



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 17, 2015

Mr. Mark E. Dempsey  
Assistant City Attorney  
City of Garland  
P.O. Box 469002  
Garland, Texas 75046-9002

OR2015-24152

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. This office also received a request for review of the redaction of certain information subject to the Act. We have combined these requests and will consider the issues presented in this single ruling assigned ID# 587426 (GCA 15-0604).

The Garland Police Department (the "department") received a request for two specified reports. You state the department is releasing some information. You further state you have redacted information you determined to be subject to section 552.130(a) of the Government Code without requesting a decision from this office, as permitted by section 552.130(c) of the Government Code. Pursuant to section 552.130(d), the requestor has asked this office to review the redacted information and render a decision as to whether this information is excepted from disclosure. Additionally, you claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which

protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). Additionally, 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.<sup>1</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. Upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information you have marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

As previously noted, pursuant to section 552.130(c) of the Government Code, the department has redacted information it determined to be subject to section 552.130(a) of the Government Code without requesting a decision from this office. You have provided that information to this office in response to the requestor seeking a ruling from this office regarding whether the information you redacted under section 552.130 is so excepted. 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). Upon review, we agree the department must withhold the information you redacted, and the additional information we have marked, pursuant to section 552.130 of the Government Code.

In summary, the department must withhold the information you have marked and we have marked under section 552.101 of the Government Code in conjunction with common-law

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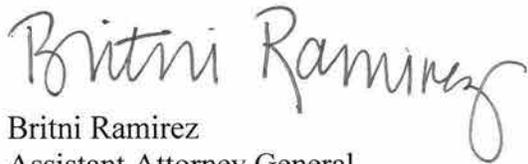
<sup>1</sup>Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

privacy. The department must withhold the information you redacted and we have marked pursuant to section 552.130 of the Government Code. The remaining information must be released.

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,



Britni Ramirez  
Assistant Attorney General  
Open Records Division

BR/bhf

Ref: ID# 587426

Enc. Submitted documents

c: Requestor  
(w/o enclosures)