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ATTORNEY GENERAL OF TEXAS

November 24, 2015

Ms. Mary Ann Powell
Counsel for the City of Stafford
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2015-24774

Dear Ms. Powell:

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# 588434 (Stafford Ref. No. COS15-057).

The City of Stafford (the "city"), which you represent, received a request for (1) the city employee handbook or policy manual; and (2) a specified internal investigation with the city's police department. You state you have released some information to the requestor. You state you will redact social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim portions of the submitted information are 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 from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 of the Government Code 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.*

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 a decision from this office. Gov't Code § 552.147(b).

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.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. However, because privacy is a personal right that lapses at death, the common-law right to privacy does not encompass information that relates only to a deceased individual. See *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); see also Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Thus, the city must withhold the date of birth pertaining to the living public citizen in the submitted information under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses information made confidential by chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier. See Open Records Decision No. 649 (1996). Section 772.318 is not applicable, however, to information furnished by the 9-1-1 caller. *Id.* at 2; see *id.* at 3 (language of confidentiality provision controls scope of its protection). You state the city is part of an emergency communication district established under chapter 772 of the Health and Safety Code. You contend some of the submitted information consists of the originating telephone numbers and addresses of 9-1-1 callers furnished to the city by a 9-1-1 service supplier. However, upon review, we find the information at issue was provided directly by the 9-1-1 caller at issue. Thus, we find this information does not consist of the originating telephone number or address of a 9-1-1 caller that was furnished by a 9-1-1 service supplier so as to be subject to chapter 772 of the Health and Safety Code. Accordingly, no portion of the submitted information may be withheld under section 552.101 in conjunction with section 772.318 of the Health and Safety Code.

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 submitted audio recordings

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).

contain motor vehicle record information subject to section 552.130. You state the city lacks the technological capability to redact information from these recordings. However, because the city had the ability to copy the submitted audio recording in order to submit the requested information for our review, we believe the city has the capacity to produce copies of only the non-confidential portions of the audio recordings at issue. Accordingly, the city must withhold the motor vehicle record information we have indicated in the submitted audio recordings, as well as the information we have marked, under section 552.130 of the Government Code.

In summary, the city must withhold the date of birth pertaining to the living public citizen in the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code. 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, 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,



Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/akg

Ref: ID# 588434

Enc. Submitted documents

c: Requestor
(w/o enclosures)