



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 7, 2015

Ms. Delietrice Henry  
Open Records Assistant  
City of Plano  
P. O. Box 860358  
Plano, Texas 75086-0358

OR2015-25595

Dear Ms. Henry:

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# 589848 (ORR #CARB091415).

The Plano Police Department (the "department") received a request for a specified incident report. You state you have released some information. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim 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. This exception 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 established. *Id.* at 681-82. The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate and embarrassing. See Open Records Decision No. 455 (1987). Furthermore, 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> *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. We note the requestor has a special right of access under section 552.023 of the Government Code to information that would otherwise be withheld to protect her privacy. See Gov't Code § 552.023(a) (person or person's authorized representative has special right of access to information held by governmental body that relates to person and that 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 herself).

Upon review, we find portions of the submitted information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must generally withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note the requestor is the spouse of one of the individuals whose information is at issue and may be this individual's authorized representative. In this case, the requestor has a right of access to the information pertaining to her spouse that would otherwise be confidential under common-law privacy. See Gov't Code § 552.023(a); ORD 481 at 4. Accordingly, if the requestor is acting as the authorized representative of her spouse, then the department may not withhold any portion of the marked information pertaining to the requestor's spouse from the requestor under section 552.101 of the Government Code on the basis of common-law privacy. If the requestor is not acting as her spouse's authorized representative, then the department must withhold the information we have marked pertaining to the requestor's

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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).

spouse under section 552.101 in conjunction with common-law privacy. In either case, the department must withhold the information we have marked pertaining to the other individual under section 552.101 in conjunction with common-law privacy. We find the remaining information you marked is not highly intimate or embarrassing and of no legitimate public concern. Thus, the department may not withhold the remaining information at issue under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. ORD 455 at 4. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find you have not demonstrated the remaining information falls within the zones of privacy or otherwise implicates an individual's privacy interests for the purposes of constitutional privacy. We therefore conclude the department may not withhold the remaining information under section 552.101 in conjunction with constitutional privacy.

In summary, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy; however, if the requestor is acting as the authorized representative of her spouse, then the department may not withhold any portion of the marked information pertaining to the requestor's spouse from the requestor under section 552.101 of the Government Code on the basis of common-law privacy. The department must release the remaining information.<sup>2</sup>

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

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<sup>2</sup>We note the requestor has a special right of access to some of the information being released in this instance. See Gov't Code § 552.023(a); ORD 481 at 4. Therefore, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Taylor", with a horizontal line extending to the right.

Matthew Taylor  
Assistant Attorney General  
Open Records Division

MT/eb

Ref: 589848

Enc. Submitted documents

c: Requestor  
(w/o enclosures)