



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 22, 2016

Ms. Alexis G. Allen  
Counsel for City of Red Oak  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Ross Tower  
500 North Akard  
Dallas, Texas 75201

OR2016-01689

Dear Ms. Allen:

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# 594838 (Red Oak ORR ID #74026).

The Red Oak Police Department (the "department"), which you represent, received a request for information pertaining to a specified incident. You claim the requested 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 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. *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.* 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. We note the information at issue includes the requestor's client's date of birth. The requestor has a right of access to this information. See Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Upon review, the department must withhold the public citizen's date of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. See Gov't Code § 552.130(a)(1)-(2). We note, the requestor has a right of access to her client's motor vehicle record information pursuant to section 552.023 of the Government Code. See *id.* § 552.023(a); ORD 481 at 4. Upon review, we find the remaining information contains information subject to section 552.130 that does not belong to the requestor's client. You state the department does not have the technological capability to redact the motor vehicle record information from the recordings. However, because the department had the ability to copy the submitted audio recordings for our review, we believe the department has the capability to produce copies of only the non-confidential portions of the audio recordings. Accordingly, the department must withhold the submitted video recording in their entirety under section 552.130 of the Government Code. The department must also withhold the motor vehicle record information we have marked and indicated in the audio recordings under section 552.130 of the Government Code.

In summary, the department must withhold the public citizen's date of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code. The department must withhold the submitted video recordings in their entirety under section 552.130 of the Government Code. The remaining information must be released.

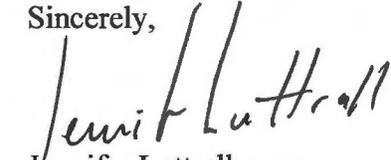
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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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).

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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/akg

Ref: ID# 594838

Enc. Submitted documents

c: Requestor  
(w/o enclosures)