



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 6, 2016

Ms. Judy Hickman
Assistant Supervisor
Beaumont Police Department
P.O. Box 3827
Beaumont, Texas 77704

OR2016-07689

Dear Ms. Hickman:

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# 605074.

The Beaumont Police Department (the "department") received a request for all information related to a specified incident. You state the department has released some information to the requestor. You claim 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.

Initially, you assert, and we agree, one of the submitted audio recordings is not responsive to the instant request because it does not pertain to the specified incident. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release such information in response to this request.¹

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

¹As our ruling is dispositive, we need not consider your remaining argument against disclosure of this information.

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.² *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 the submitted video recordings and the responsive audio recordings contain a public citizen's date of birth. You state the department does not have the technological capability to redact this 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 recordings in their entireties under section 552.101 of the Government Code in conjunction with common-law privacy.³ The department must also withhold the public citizen's date of birth in the responsive audio recordings 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 relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130. Upon review, we find the responsive audio recordings contain information subject to section 552.130. We understand you to claim 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 motor vehicle record information in the responsive audio recordings under section 552.130 of the Government Code.

In summary, the department must withhold the submitted video recordings in their entireties under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the public citizen's date of birth in the responsive audio recordings under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information in the

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).

³As our ruling is dispositive, we need not consider your remaining argument against disclosure of this information.

responsive audio recordings under section 552.130 of the Government Code. The department must release the remaining responsive 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,

A handwritten signature in black ink, appearing to read "Tim Neal".

Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 605074

Enc. Submitted documents

c: Requestor
(w/o enclosures)