



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 1, 2016

Ms. Linda Pemberton
Paralegal
Office of the City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540

OR2016-09537A

Dear Ms. Pemberton:

This office issued Open Records Letter No. 2016-09537 (2016) on April 27, 2016. Since that time, we have received new information that affects the facts on which this ruling was based. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on April 27, 2016. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act")). This ruling was assigned ID# 619875 (ID# W018413).

The Killeen Police Department (the "department") received a request for video recordings, audio recordings, crash reports, calls, and other information related to a specified car accident and any incident a specified police officer may have been involved with prior to the accident.¹ You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the

¹We note the department did not comply with section 552.301 of the Government Code in requesting this decision for the submitted audio recording. *See* Gov't Code § 552.301(b), (e). Nonetheless, because section 552.130 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted audio recording. *See id.* §§ 552.007, .302, .352.

Government Code.² 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 information subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. Transp. Code §§ 550.061 (operator’s accident report), .062 (officer’s accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity may release an accident report in accordance with subsections (c) and (c-1). Transp. Code § 550.065(a)(1). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c).

In this instance, the requestor is not a person listed under section 550.065(c). Thus, the submitted accident report is confidential under section 550.065(b), and the department must withhold it under section 552.101 of the Government Code. However, section 550.065(c-1) requires the department to create a redacted accident report that may be requested by any person. *Id.* § 550.065(c-1). The redacted accident report may not include the information listed in subsection (f)(2). *Id.* Therefore, as you acknowledge, the requestor has a right of access to the redacted accident report. However, you have failed to demonstrate any of the remaining information constitutes written accident reports for purposes of section 550.065. Therefore, the remaining information is not confidential under section 550.065, and no portion of it may be withheld under section 552.101 on that basis.

We note portions of the remaining information are subject to sections 552.101 and 552.130 of the Government Code.³ Section 552.101 also 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. *Indus. Found.*, 540 S.W.2d at 682. In considering whether a public citizen’s date of birth is private, the Third Court of

²Although the department does not raise section 552.130 in its briefing to this office, we understand the department to raise this exception based on its markings.

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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.⁴ *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. Thus, the department must withhold the public citizen's date of birth in the audio portion of the video recording under section 552.101 in conjunction with common-law privacy. The audio portion is intertwined with the video portion of the recording. You inform us the department does not possess the technological capability to redact information from the submitted video recording. Thus, we find the department must withhold the entirety of the submitted video recording under section 552.101 in conjunction with common-law privacy.⁵ See Open Records Decision No. 364 (1983).

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 recording contains motor vehicle record information that is subject to section 552.130. The department states it lacks the technical capability to redact the information subject to section 552.130 from the recording. Nevertheless, because the department had the ability to copy the submitted audio recording in order to submit the requested information for our review, we believe the department has the capacity to produce a copy of only the non-confidential portions of the recording. Therefore, the department must withhold the audible motor vehicle record information in the submitted audio recording it has indicated under section 552.130 of the Government Code. However, it may not withhold any of the remaining information on that ground.

In summary, the department must withhold the submitted accident report under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code, but must release the redacted accident report to the requestor pursuant to section 550.065(c-1) of the Transportation Code. The department must withhold the entirety of the submitted video recording under section 552.101 in conjunction with

⁴Section 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).

⁵As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.

common-law privacy. The department must withhold the audible motor vehicle record information in the submitted audio recording it has indicated 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.

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,



Kavid Singh
Assistant Attorney General
Open Records Division

KVS/som

Ref: ID# 619875

Enc. Submitted documents

c: Requestor
(w/o enclosures)