



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 11, 2016

Mr. Julian W. Taylor, III
Counsel for the City of Freeport
The Law Office of Wallace Shaw, P.C.
P.O. Box 3073
Freeport, Texas 77542-1273

OR2016-10745

Dear Mr. Taylor:

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# 609879.

The City of Freeport (the "city"), which you represent, received a request for information pertaining to incidents of dogs running at large during a specified time period. You state the city released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have indicated some of the submitted audio recordings are not responsive to the instant request. This ruling does not address the public availability of non-responsive information, and the city is not required to release non-responsive information in response to this request.²

¹We note the city did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

²As our determination is dispositive, we need not address your argument against disclosure of this information.

Section 552.101 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.³ *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 audio recordings contain public citizens’ dates of birth. 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 recordings 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 all public citizens’ dates of birth in the submitted audio recordings under section 552.101 of the Government Code in conjunction with common-law privacy.

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 contain motor vehicle record information subject to section 552.130. As noted above, 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 in the submitted audio recordings under section 552.130 of the Government Code.

In summary, the city must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy and the motor vehicle record information under section 552.130 of the Government Code in the submitted audio recordings. The city must release the remaining responsive information.

³Section 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 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 that reads "Britni Ramirez". The signature is written in a cursive, flowing style.

Britni Ramirez
Assistant Attorney General
Open Records Division

BR/dls

Ref: ID# 609879

Enc. Submitted documents

c: Requestor
(w/o enclosures)