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ATTORNEY GENERAL OF TEXAS

May 20, 2016

Ms. Akilah Mance
Counsel for the City of Stafford
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2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2016-11583

Dear Ms. Mance:

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# 610876 (Ref. COS16-030).

The Stafford Police Department (the "department"), which you represent, received a request for video records pertaining to a specified incident. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note, with the exception of the submitted video recordings, the submitted information is not responsive to the instant request for information because it does not consist of the requested video footage. This ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to this request.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental

body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Upon review, we find one of the submitted recordings contains information subject to section 552.1175. You state the department lacks the technological capability to redact the confidential information from the submitted video recordings. Accordingly, to the extent the information we have indicated relates to an individual who is currently licensed as a peace officer, who elects to restrict access to the information in accordance with section 552.1175(b), the department must withhold the video recording at issue in its entirety under 552.1175 of the Government Code. However, we find none of the remaining responsive information is subject to section 552.1175 of the Government Code. Accordingly, the department may not withhold any of the remaining information on that basis.

Section 552.130 excepts from disclosure 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 id.* § 552.130. Upon review, we find one of the submitted video recordings contains confidential motor vehicle record information that is excepted from disclosure under section 552.130. In this instance, you state the department does not possess the technological capability to redact information from video files. Thus, we agree the department must withhold the entirety of the video recording we have indicated under section 552.130 of the Government Code. *See Open Records Decision No. 364 (1983)*. However, we find none of the remaining responsive information is subject to section 552.130 of the Government Code. Accordingly, the department may not withhold any of the remaining information on that basis.

Section 552.101 of the Government Code excepts "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, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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. *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.¹ *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 394061, at *3. Upon review, we find you have not demonstrated any of the information at issue is highly intimate or embarrassing and not of legitimate public concern. Consequently, none of the information at issue may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, to the extent the information we have indicated relates to an individual who is currently licensed as a peace officer who elects to restrict access to the information in accordance with section 552.1175(b), the department must withhold the video recording at issue in its entirety under 552.1175 of the Government Code. The department must withhold the entirety of the video recording we have indicated under section 552.130 of the Government Code. The remaining responsive 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,



Paige Lay
Assistant Attorney General
Open Records Division

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¹Section 552.102(a) exempts 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).

Ref: ID# 610876

Enc. Submitted documents

c: Requestor
(w/o enclosures)