



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 25, 2016

Ms. Derenda Rush
Service Division
Amarillo Police Department
200 S.E. Third Avenue
Amarillo, Texas 79101-1514

OR2016-12029

Dear Ms. Rush:

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# 611719.

The Amarillo Police Department (the "department") received a request for information concerning a named individual and certain cases, including witness statements.¹ The department released information responsive to the request but made redactions as permitted by sections 552.117, 552.1175, 552.130, and 552.136 of the Government Code without requesting a decision from this office. *See* Gov't Code §§ 552.024(c)(2), .1175(f), .130(c), .136(c). The requestor has asked this office to review the information and render a decision as to whether it is excepted from disclosure. *See id.* §§ 552.024(c-1), .1175(g), .130(d), .136(d). We have considered the department's position and reviewed the information.

Initially, we note you have submitted information that you state is not responsive to the request because it identifies the named individual as a witness in an unspecified case. Upon review, we agree the information we marked is not responsive to the request. The department is not required to release information that is not responsive to the request, and this ruling does not address the public availability of non-responsive information. However,

¹The department sought and received clarification of the request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

the remaining information we marked is responsive to the request for information concerning witness statements for the specified case. Because this information is responsive to the request, it must be released unless an exception to disclosure applies.

You state you did not release the information we marked as responsive. You also redacted dates of birth from the information you did release. You do not assert, nor does a review of our records indicate, the department is authorized to withhold any of this information without seeking a ruling from this office. *See id.* § 552.301; Open Records Decision No. 673 (2001). Accordingly, the department was required to seek a ruling to withhold that information, and it did not meet the procedural deadlines under section 552.301(b) of the Government Code. *See Gov't Code* § 552.301(b). Nonetheless, sections 552.101, 552.117, 552.1175, 552.130, 552.136, and 552.137 of the Government Code provide compelling reasons to withhold information from disclosure, so we will consider the applicability of those exceptions to the information at issue.² *See id.* § 552.302.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 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 member of the public’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 *Tex. 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 members of the public, and thus, dates of birth of members of the public are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. We note the right to privacy expires at the time of an individual’s death. *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded” (quoting Restatement (Second) of Torts

²The 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).

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).

§ 6521(1977)); Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 (1981) (“the right of privacy is personal and lapses upon death”). Accordingly, the department may not withhold the date of birth of the deceased individual, but it must withhold all remaining dates of birth of living members of the public under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117 of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of certain individuals who request this information be kept confidential under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(1)–(11). We note section 552.117 applies only to information held by a governmental body in an employment capacity. The information at issue is held by the department in a law enforcement capacity. Accordingly, section 552.117(a) does not apply in this situation, and the department may not withhold the information you marked under section 552.117 of the Government Code. However, this same information might be subject to section 552.1175 of the Government Code.

Section 552.1175 of the Government Code excepts from disclosure the home address and 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. *Id.* § 552.1175. Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure” and to “current or former employees of the Texas Department of Criminal Justice [the “TDCJ].” *Id.* § 552.1175(a)(1), (3). You state the information you marked relates to licensed peace officers and a current or former employee of the TDCJ. Some of the information you marked does not consist of the types of information protected by section 552.1175, and we have marked it for release. However, the remaining information you marked and the additional information we marked are subject to section 552.1175. If the individuals to whom this information relates elect to restrict access to this information in accordance with section 552.1175(b), then the department must withhold the information you marked and the information we marked under section 552.1175 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator’s or driver’s license issued by an agency of this state or another state or country. *Id.* § 552.130(a)(1). We note section 552.130 is intended to protect personal privacy interests, which terminate at death. *See Moore*, 589 S.W.2d at 491. Accordingly, with the exception of the decedent’s information, the department must withhold the information you marked and the information we marked under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the department must withhold the information you marked and the information we marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code provides, “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). *Id.* § 552.137(a)–(c). Accordingly, the department must withhold the e-mail address we marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its release.

Section 552.147 of the Government Code provides, “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147. Accordingly, the department may not withhold the decedent’s social security number under section 552.147 of the Government Code, but it may withhold any remaining social security numbers under section 552.147 of the Government Code.

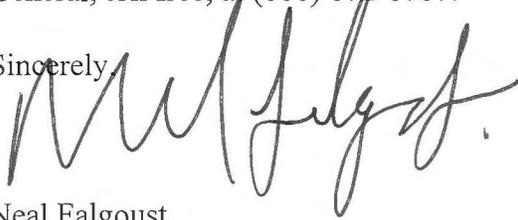
In summary, the department must withhold: (1) all dates of birth of living members of the public under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the information you marked and the information we marked under section 552.1175 of the Government Code if those individuals elect to restrict access to that information in accordance with section 552.1175(b); (3) the motor vehicle record information of living individuals that you marked and the information we marked under section 552.130 of the Government Code; (4) the information you marked and the information we marked under section 552.136 of the Government Code; and (5) the e-mail addresses we marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its release. The department may withhold the social security numbers of only living individuals under section 552.147 of the Government Code. The department must release the remaining 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 "Neal Falgoust". The signature is fluid and cursive, with a large initial "N" and "F".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/eb

Ref: ID# 611719

Enc. Submitted documents

c: Requestor
(w/o enclosures)