



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 12, 2016

Ms. Akilah Mance
Counsel for City of Stafford
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019

OR2016-15662

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# 618142 (Ref No: COS16-050).

The Stafford Police Department (the "department"), which you represent, received a request for the dash camera video and radio traffic for a specified accident. You state you have released some information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the instant request because it does not pertain to the requested video and audio recordings. This ruling does not address the public availability of the non-responsive information, which we have marked, and the department need not release it in response to the request.

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. This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Further, 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 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 3394061, 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. Thus, none of the responsive information may be withheld under section 552.101 in conjunction with common-law privacy.

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* Gov't Code § 552.130. You assert the submitted video and audio recordings contain motor vehicle record information that is excepted from disclosure under section 552.130. Upon review, we find the submitted video recording contains confidential motor vehicle record information. In this instance, you state the department does not possess the technological capability to redact information from video file. Thus, we agree the department must withhold the entire video recording containing the motor vehicle record information under section 552.130 of the Government Code. *See* Open Records Decision No. 364 (1983). You also state the department does not possess the technological capability to redact information from audio files. However, because the department had the ability to copy the submitted audio recording in order to submit it for our review, we believe the department has the capability to produce a copy of only the non-confidential portions of the audio recording. Accordingly, the department must withhold the motor vehicle record

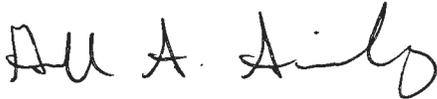
¹Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

information within the audio recording 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,

A handwritten signature in black ink, appearing to read "Gerald A. Arismendez". The signature is written in a cursive, flowing style.

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/dls

Ref: ID# 618142

Enc. Submitted documents

c: Requestor
(w/o enclosures)