



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 12, 2016

Ms. Judy Hickman
Assistant Supervisor
Records Division
Beaumont Police Department
P.O. Box 3827
Beaumont, Texas 77704

OR2016-15747

Dear Ms. Hickman:

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# 618053.

The Beaumont Police Department (the "department") received a request for all information pertaining to a specified incident. You state you will release some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.1175, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

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

¹Although you raise section 552.117 of the Government Code for the submitted information, we note section 552.1175 is the proper exception to raise for information held in a non-employment context.

Texas Supreme Court are delineated in *Industrial Foundation. Id.* at 683. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. 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.² *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 department has failed to demonstrate some of the information you have marked is highly intimate or embarrassing and of no legitimate public interest. Thus, the department may not withhold this information, which we have marked for release, under section 552.101 of the Government Code in conjunction with common-law privacy. However, with the exception of the information we have marked for release, we find the information you have marked, and the additional information we have marked, satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the information we have marked for release, the department must withhold the information you have marked, and the additional information we have marked, 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 a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130. Upon review, we find the department must withhold the motor vehicle record information you have marked, and the additional information we have marked, under section 552.130 of the Government Code. Furthermore, we note the submitted video recordings contain motor vehicle record information. You state the department lacks the technology to redact this information from the video recordings.

²Section 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).

Based on these representations, we find the department must also withhold the submitted video recordings in their entireties under section 552.130 of the Government Code.³ *See* Open Records Decision No. 364 (1983).

In summary, with the exception of the information we have marked for release, the department must withhold the information you have marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information you have marked, the additional information we have marked, and the submitted video recordings in their entireties 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,



Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/bw

Ref: ID# 618053

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we need not address the department's remaining argument against disclosure of this information.