



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 29, 2016

Ms. Julia Gannaway
Counsel for the City of Waxahachie
Lynn Ross Gannaway & Cranford, L.L.P.
306 West Broadway Avenue
Fort Worth, Texas 76104

OR2016-17123

Dear Ms. Gannaway:

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# 620614.

The City of Waxahachie (the "city"), which you represent, received a request for the personnel information of an officer for the city's police department and any audio recordings, transcripts, or notes of interviews conducted with three named individuals during a specified time period. We understand the city is withholding information subject to section 552.117(a)(2) of the Government Code as permitted by Open Records Decision No. 670 (2001).¹ You also state the city is withholding motor vehicle record information pursuant to section 552.130(c) of the Government Code.² You state the city is releasing some of the requested information. You claim 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. We have also received and

¹Open Records Decision No. 670 is a previous determination that authorizes all governmental bodies to withhold a peace officer's home address and telephone number, personal cellular telephone and pager numbers, and family member information under section 552.117(a)(2) without requesting a decision from this office.

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

considered the requestor's comments. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we note most of the submitted information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2016-13696 (2016). In that ruling, we determined (1) the city must withhold Attachment B-1 under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code; (2) the city must withhold the employee's date of birth it marked within Attachment B-3 under section 552.102(a) of the Government Code; and (3) the city must release the remaining information. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the city must continue to rely on Open Records Letter No. 2016-13696 as a previous determination and withhold or release the identical information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Section 552.101 of the Government Code 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 *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 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 subject to section 552.101 of the Government Code in conjunction with common-law privacy. You state the city does not have the technological capability to redact the dates of birth from the audio recordings. However, because the city had the ability to copy the submitted audio recordings for our review, we believe the city has the capability to produce a copy of only the non-confidential portions of the audio recordings. Accordingly, the city must withhold all

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).

public citizens' dates of birth within the submitted audio recordings under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must continue to rely on Open Records Letter No. 2016-13696 as a previous determination and withhold or release the identical information at issue in accordance with that ruling. The city must withhold all public citizens' dates of birth within the submitted audio recordings under section 552.101 of the Government Code in conjunction with common-law privacy. 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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

Ref: ID# 620614

Enc. Submitted documents

c: Requestor
(w/o enclosures)