KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 7, 2016

Mr. Robert Ray
Assistant City Attorney
City of Longview
P.O. Box 1952
Longview, Texas 75606

OR2016-20131

Dear Mr. Ray:

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# 625510.

The Longview Police Department (the "department") received a request for information concerning a specified case. The department released information responsive to the request but made redactions as permitted by section 552.130 of the Government Code without requesting a decision from this office. *See* Gov't Code § 552.130(c). Pursuant to section 552.130(d), the requestor has asked this office to review the information and render a decision as to whether it is excepted from disclosure under section 552.130(a) of the Government Code. *See id.* § 552.130(c)–(e). We have considered the department's position and reviewed the information.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit 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 individual privacy interests, so the requestor has a right of access to her own information. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, the department must withhold the driver's license information you marked under section 552.130 of the Government Code.

You state the department redacted information it asserts is subject to section 552.101 of the Government Code. You do not state, nor does a review of our records indicate, the department is authorized to withhold that 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 in asking this office for a ruling on that information. *See* Gov't Code § 552.301(b). Nonetheless, because section 552.101 of the Government Code makes information confidential, it can provide a compelling reason to withhold that information from disclosure, so we will consider the applicability of this exception to the information at issue. *See id.* § 552.302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses section 771.061 of the Health and Safely Code, which makes confidential "[i]nformation that a service provider of communications service is required to furnish to a governmental entity . . . in providing 9-1-1 service" and "[i]nformation that is contained in an address database maintained by a governmental entity or a third party used in providing 9-1-1 service." Health & Safety Code § 771.061 (a). You explain the information you have marked was used or maintained for the purpose of providing 9-1-1 service and was obtained from a third-party communications service provider. Based on your representations and our review, we conclude the information you marked is confidential under section 771.061 of the Health and Safety Code. Accordingly, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 771.061 of the Health and Safety Code.

Section 552.101 of the Government Code also 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.[1] *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 a requestor has a right of access to his own date of birth. *See* Gov't Code § 552.023(b); ORD 481. Accordingly, the department must withhold all dates of birth of members of the public, other

[1]Section 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).

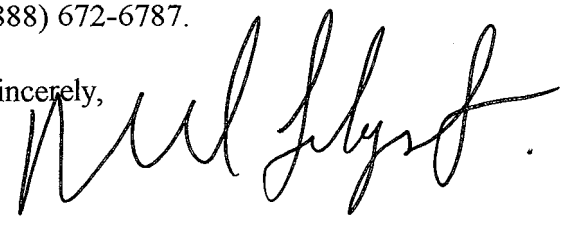
than the requestor's, under section 552.101 of the Government Code in conjunction with common-law privacy. You state the department does not have the technological capability to redact this information from the submitted video recording. We conclude the department must withhold the video recording in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. *See* Open Records Decision No. 364 (1983).

In summary, the department must withhold the driver's license information you marked under section 552.130 of the Government Code. The department must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 771.061 of the Health and Safety Code. The department must withhold all dates of birth of members of the public, other than the requestor's, and the entirety of the submitted video recording under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information.[2]

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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/bhf

Ref: ID# 625510

Enc. Submitted documents

c: Requestor
(w/o enclosures)

---

[2]Section 552.147 of the Government Code authorizes a governmental body to redact the social security number of a living person without requesting a ruling. *See* Gov't Code § 552.147(b).