



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 7, 2016

Mr. T. Phillip Brent  
Counsel for City of Port Neches  
Bradley, Steele & Pierce, L.L.P.  
3120 Central Mall Drive  
Port Arthur, Texas 77642

OR2016-20139

Dear Mr. Brent:

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# 625759.

The City of Port Neches (the "city"), which you represent, received a request for a specified offense report. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. Additionally, you state, and provide documentation showing, you notified the victim in the report of the request for information and of her right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the victim. We have considered the submitted arguments 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

Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has also concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. Open Records Decision No. 393 at 2 (1983). 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.<sup>1</sup> *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, except for the information we marked for release, we find the information you marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, except for the information we marked for release, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. Further, we note a date of birth you marked in the submitted information belongs to an individual who has been de-identified and whose privacy interests are, thus, protected. Thus, this date of birth, which we have marked, may not be withheld under section 552.101 on the basis of common-law privacy. The remaining date of birth you marked must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by this state or another state or country. Gov't Code § 552.130(a)(1), (2). Accordingly, the city must withhold the motor vehicle record information you marked under section 552.130 of the Government Code.

In summary, except for the information we marked for release, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information you marked under section 552.130 of the Government Code. The city must release the remaining information.

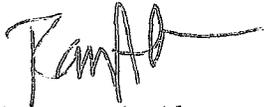
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<sup>1</sup>Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

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](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,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/dls

Ref: ID# 625759

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

2 Third Parties  
(w/o enclosures)