



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 11, 2016

Ms. Captoria Brown
Paralegal
Office of the City Attorney
City of Carrollton
1945 East Jackson Road
Carrollton, Texas 75006

OR2016-00816

Dear Ms. Brown:

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# 593625 (City ID# 5978).

The Carrollton Police Department (the "department") received a request for all reports related to a specified automotive accident. You state you have released some information to the requestor. We understand the department will redact the information you have marked under section 552.147(b) of the Government Code.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.137 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information may have been the subject of previous requests for information, as a result of which this office issued Open Records Letter No. 2015-21776 (2015). In that ruling, we determined, in pertinent part, the City of Carrollton: (1) may withhold certain information under section 552.108(a)(1) of the

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

²Although you do not raise sections 552.130 and 552.137 of the Government Code in your brief, we understand you to raise these exceptions based on your markings.

Government Code on behalf of the Dallas County District Attorney's Office (the "district attorney's office"), (2) must withhold certain information under section 552.101 of the Government Code in conjunction with common-law privacy, (3) must withhold certain information under section 552.130 of the Government Code, and (4) must release the remaining information at issue. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based with respect to the information at issue. Accordingly, we conclude the department must continue to rely on Open Records Letter No. 2015-21776 as a previous determination and withhold or release the submitted information that was at issue in the previous ruling 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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will address your arguments against disclosure of the remaining information, which is not subject to the previous ruling.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You provide a representation from the district attorney's office demonstrating the submitted information relates to a pending criminal prosecution. Based upon this representation, we conclude release of the information at issue will interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we find the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.³

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

³As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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.⁴ *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. However, because privacy is a personal right that lapses at death, the common-law right to privacy does not encompass information that relates only to a deceased individual. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Upon review, we find the department must withhold the dates of birth pertaining to living public citizens in the remaining information under section 552.101 of the Government Code in conjunction with the doctrine of common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or 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. Gov't Code § 552.130(a). The purpose of section 552.130 is to protect the privacy interests of individuals. We note the remaining information contains the motor vehicle record information in which the requestor's client has an interest. The requestor has a right of access to his client's motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a) (person or person's authorized representative has special right of access to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Further, some of the remaining motor vehicle record information pertains solely to a deceased individual. Because the right of privacy lapses at death, motor vehicle record information that pertains solely to a deceased individual may not be withheld under section 552.130. *See Moore*, 589 S.W.2d at 491; *see also* ORD 272 at 1. Accordingly, except for the motor vehicle record information in which the requestor's client has an interest and the motor vehicle record information pertaining solely to a deceased individual, the department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

In summary, the department must continue to rely on Open Records Letter No. 2015-21776 as a previous determination and withhold or release the submitted information that was at issue in the previous ruling in accordance with that ruling. The department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must withhold the dates of birth pertaining to living public citizens in the remaining information under section 552.101 of the Government Code. Except for the motor vehicle record information in which the requestor's client has an interest and the motor

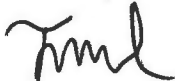
⁴Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

vehicle record information pertaining solely to a deceased individual, the department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code. The department must release the remaining information.⁵

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 593625

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵We note the requestor has a special right of access to some of the motor vehicle record information being released in this instance. *See* Gov't Code § 552.023(a); ORD 481 at 4. We note section 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). Accordingly, if the department receives another request for this information from a requestor who does not have such a right of access, section 552.130(c) authorizes the department to redact the motor vehicle record information at issue without the necessity of requesting a decision under the Act.