



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 12, 2016

Ms. Aimee Alcorn
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2016-00900

Dear Ms. Alcorn:

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# 594018.

The Corpus Christi Police Department (the "department") received a request for information concerning a specified incident. The department released information responsive to the request but made redactions as permitted by section 552.130(c) 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. We have considered the department's position and reviewed the information at issue.

The department also redacted information in accordance with the previous determination issued in Open Records Letter No. 2011-16393 (2011). That ruling authorizes the department to withhold without seeking a ruling from this office the originating telephone number and address of a 9-1-1 caller provided by a service provider in accordance with chapter 772 of the Health and Safety Code. Nonetheless, we will address the applicability of this exception to the information you redacted. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either

constitutional, statutory, or by judicial decision.”¹ Gov’t Code § 552.101. Section 772.318 applies to an emergency 9-1-1 district established in accordance with chapter 772, and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). We understand the department is part of an emergency communication district that was established under section 772.318. We note the address you redacted is the location of a cellular telephone tower, and not the caller’s originating address. The department may not withhold that information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. However, the department must withhold the telephone number you redacted under section 552.101 of the Government Code in conjunction with section 772.318 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.² *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 the requestor in this case has a right of access to his client’s own private 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 all dates of birth of members of the public, other than the requestor’s client, under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator’s or driver’s license or permit and a motor vehicle title or registration

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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).

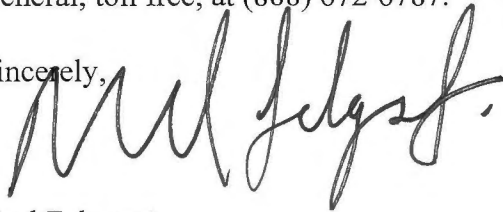
issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1)–(2). The requestor also has a right of access to his client's own motor vehicle record information. *See id.* § 552.023. Accordingly, to the extent the motor vehicle record information you redacted does not relate to the requestor's client, the department must withhold it under section 552.130 of the Government Code.

In summary, the department must withhold the telephone number you redacted under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The department must withhold all dates of birth of members of the public, other than the requestor's client, under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the motor vehicle record information you redacted does not relate to the requestor's client, the department must withhold it under section 552.130 of the Government Code. The department must release the remaining information.

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/eb

Ref: ID#594018

Enc. Submitted documents

c: Requestor
(w/o enclosures)