



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 2, 2016

Ms. Judy Hickman
Assistant Supervisor
Beaumont Police Department
P.O. Box 3827
Beaumont, Texas 77704

OR2016-02557

Dear Ms. Hickman:

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# 596297.

The Beaumont Police Department (the "department") received a request for all information regarding a named individual during a specified time period.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.1085, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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, 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

¹You state the department sought and received clarification of the request. See Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

satisfied. *Id.* at 681-82. This office has found a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

Upon review, we find the present request requires the department to compile unspecified law enforcement records concerning the named individual. Accordingly, we find the request implicates the named individual's right to privacy. We note, however, the requestor is the authorized representative of the individual at issue. Section 552.023(a) states "a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023; *see* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, the requestor has a right of access to information pertaining to the named individual that would otherwise be confidential. Thus, the submitted information may not be withheld from this requestor under section 552.101 of the Government Code in conjunction with common-law privacy as a compilation of the named individual's criminal history.

Section 552.101 of the Government Code also encompasses information subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator's accident report), .062 (officer's accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity may release an accident report in accordance with subsections (c) and (c-1). *Id.* § 550.065(c), (c-1). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c).

We note the submitted information contains a ST-3 accident report form completed pursuant to chapter 550. In this instance, the requestor is a person listed under section 550.065(c). Thus, the department must release the accident report to this requestor pursuant to section 550.065(c) of the Transportation Code.

As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation. Indus. Found.*, 540

S.W.2d at 683. 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.² *Texas 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 "the right of privacy is purely personal," that right "terminates upon the death of the person whose privacy is invaded." *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.); Attorney General Opinions JM-229 (1984) ("the right of privacy lapses upon death"), H-917 (1976) ("We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death."); Open Records Decision No. 272 (1981) ("the right of privacy is personal and lapses upon death"). Thus, information pertaining solely to a deceased individual may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Additionally, we note the information at issue includes the named individual's date of birth. As the authorized representative of the named individual, the requestor has a right of access to this information and the department may not withhold this information under common-law privacy. See Gov't Code § 552.023; ORD 481. Upon review, except for the named individual's date of birth, the department must withhold the remaining living public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.³

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5

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).

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

(citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). As noted above, the right to privacy is a personal right that lapses at death and therefore may not be asserted solely on behalf of a deceased individual. *See Moore*, 589 S. W.2d at 491; ORD 272 at 1. However, the United States Supreme Court has determined that surviving family members can have a privacy interest in information relating to their deceased relatives. *See Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157 (2004). However, as of the date of this decision, we have not received any correspondence from the deceased individual's family. Thus, we have no basis for determining the family's privacy interests in the information at issue. Therefore, this information may not be withheld under section 552.101 in conjunction with constitutional privacy.

Section 552.102(a) of the Government Code 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). The Texas Supreme Court has considered the applicability of section 552.102, and has held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336, 348 (Tex. 2010). Upon review, we find no portion of the remaining information is excepted under section 552.102. Accordingly, the department may not withhold any of the information at issue under section 552.102 of the Government Code.

Section 552.1085 of the Government Code provides, in part:

(c) A sensitive crime scene image in the custody of a governmental body is confidential and excepted from the requirements of Section 552.021 and a governmental body may not permit a person to view or copy the image except as provided by this section. This section applies to any sensitive crime scene image regardless of the date that the image was taken or recorded.

Gov't Code § 552.1085(c). For purposes of section 552.1085, "sensitive crime scene image" means "a photograph or video recording taken at a crime scene, contained in or part of a closed criminal case, that depicts a deceased person in a state of dismemberment, decapitation, or similar mutilation or that depicts the deceased person's genitalia." *See id.* § 552.1085(a)(6). Upon review, we find none of the submitted information consists of sensitive crime scene images for the purposes of section 552.1085. Consequently, the department may not withhold any portion of the submitted information under section 552.1085(c) of the Government Code.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information

confidential.⁴ *Id.* § 552.1175. We note the remaining information contains the address and telephone number of a peace officer employed by the department and this information is not held in an employment capacity. Therefore, if the peace officer at issue elects to restrict access to his information in accordance with section 552.1175(b), the department must withhold the information we have marked under section 552.1175. If the peace officer at issue does not elect to restrict access to his information, the department may not withhold this information pursuant to section 552.1175.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, 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. *See id.* § 552.130. We note the purpose of section 552.130 is to protect personal privacy interests. Thus, as the authorized representative of the named individual, the requestor has a right of access to the named individual's motor vehicle record information under section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481. Therefore, the department may not withhold the named individual's motor vehicle record information from the requestor under section 552.130 of the Government Code. Further, as noted above, the right of privacy lapses at death. *See Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229, H-917; ORD 272. Therefore, motor vehicle record information that pertains solely to a deceased individual may not be withheld under section 552.130. Thus, the department must withhold the motor vehicle record information we have indicated in the remaining information under section 552.130 of the Government Code.

Section 552.136 of the Government Code states “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Thus, the department must withhold the information you have marked, and the additional information we have marked, under section 552.136 of the Government Code.

You claim the social security numbers in the remaining information are excepted from disclosure under section 552.147 of the Government Code. This section provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147. We note the remaining information contains a deceased individual's social security number. Because section 552.147 pertains only to social security numbers of living individuals, the decedent's social security number may not be withheld under section 552.147. We also note the remaining information contains the named individual's social security number, which may not be withheld in this instance. *See id.* § 552.023(a). Therefore, with the exception of the named individual's social security number, the

⁴The 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).

department may withhold the social security numbers of living individuals you have marked, and the additional social security number we have marked, under section 552.147 of the Government Code.

In summary, the department must release the accident report to this requestor pursuant to section 550.065(c) of the Transportation Code. Except for the named individual's date of birth, the department must withhold the remaining living public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. If the peace officer at issue elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, the department must withhold the information we have marked under section 552.1175 of the Government Code. The department must withhold the motor vehicle record information we have indicated in the remaining information under section 552.130 of the Government Code. The department must withhold the information you have marked and we have marked under section 552.136 of the Government Code. With the exception of the named individual's social security number, the department may withhold the social security numbers of living individuals you have marked and we have marked under section 552.147 of the Government Code. The remaining information must be released.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,



Britni Ramirez
Assistant Attorney General
Open Records Division

BR/bhf

⁵We note the information being released contains confidential information to which the requestor has a right of access. See Gov't Code § 552.023(a). If the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

Ref: ID# 596297

Enc. Submitted documents

c: Requestor
(w/o enclosures)