



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 7, 2016

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

Ms. Rita Monterrosa
Litigation Paralegal
Office of the City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604-0060

OR2016-05287

Dear Ms. Monterrosa:

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# 600815.

The Abilene Police Department (the "department") received four requests from different requestors for information pertaining to incidents involving two named individuals at several specified addresses. You state the department has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state incident number 15-015850 relates to a closed case that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to incident number 15-015850.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the department may withhold incident number 15-015850 under section 552.108(a)(2) of the Government Code.

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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual’s privacy. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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.¹ *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.

The department seeks to withhold the entirety of incident number 15-020170 under section 552.101 in conjunction with common-law privacy. However, the department has not

¹Section 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).

demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy. Accordingly, the department may not withhold the entirety of incident number 15-020170 under section 552.101 of the Government Code on that basis. Upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold this information, which we have marked and noted, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

Some of the remaining information may be subject to section 552.1175 of the Government Code.² Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). Some of the remaining information, which we have marked and noted, relates to officers of the department but the information is not held by the department in an employment capacity. Accordingly, to the extent the officers at issue elect to restrict access to the information at issue in accordance with section 552.1175(b), the department must withhold the information we marked and noted under section 552.1175 of the Government Code. Conversely, if the officers at issue do not elect to restrict access to

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

the information in accordance with section 552.1175(b), the information we marked and noted may not be withheld under section 552.1175.

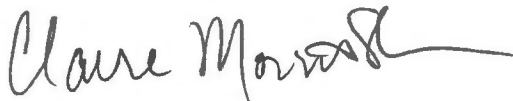
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. Accordingly, the department must withhold the motor vehicle record information we have marked and noted under section 552.130 of the Government Code.

In summary, with the exception of the basic information, which must be released, the department may withhold incident number 15-015850 under section 552.108(a)(2) of the Government Code. The department must withhold the information we marked and noted within the information related to report number 15-020170 under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the officers whose information we marked and noted elect to restrict access to the information at issue in accordance with section 552.1175(b) of the Government Code, the department must withhold the information we marked and noted under section 552.1175 of the Government Code. The department must also withhold the motor vehicle record information we marked and noted under section 552.130 of the Government Code. The department must release the remaining information related to report number 15-020170.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 600815

Enc. Submitted documents

c: 4 Requestors
(w/o enclosures)

APR - 5 2018 RT

At 2:30 P.M.
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-16-001160

SUSAN LEWIS KING and AUSTIN KING, M.D., <i>Plaintiffs,</i>	§ § § § § § § § § §	IN THE DISTRICT COURT
V.		TRAVIS COUNTY, TEXAS
KEN PAXTON, ATTORNEY GENERAL OF TEXAS and THE CITY OF ABILENE, TEXAS, <i>Defendants.</i>		53 RD JUDICIAL DISTRICT

FINAL JUDGMENT

BE IT REMEMBERED that on this day came to be considered Plaintiffs Susan Lewis King and Austin King, M.D.’s Motion for Summary Judgment, Defendant Attorney General’s Cross-Motion for Summary Judgment, Defendant City of Abilene’s Cross-Motion for Summary Judgment, and Intervenor Abilene-Sweetwater Broadcasting Company d/b/a KTXS TV’s Cross-Motion for Summary Judgment.

After considering the motion, cross-motions, the competent summary judgment evidence, pleadings on file, argument of counsel and applicable law, the Court grants in part and denies in part Plaintiffs’ Motion for Summary Judgment, the Court grants in part and denies in part Defendant Attorney General’s Cross-Motion for Summary Judgment, and the Court grants in part and denies in part Intervenor Abilene-Sweetwater Broadcasting Company d/b/a KTXS TV’s Cross-Motion for Summary Judgment.

The “information at issue” in this suit consists of: (1) a ten-page narrative report stemming from Abilene Police Department Incident 15-020170 of October 11, 2015; (2) two audio recordings; (3) three video recordings made by Abilene Police Department in-car cameras; and (4) five pages of emails between the Abilene Police Department, the Abilene City Attorney, and the Department of Public Safety.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that portions of the information at issue, as indicated by the Court's decision letter of March 1, 2018, are EXCEPTED FROM DISCLOSURE. The City of Abilene shall WITHHOLD all such identified information.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that portions of the information at issue, as indicated by Attorney General Open Records Letter Rulings OR2016-05287 and OR2016-05982, are EXCEPTED FROM DISCLOSURE. The City of Abilene shall WITHHOLD all such identified information.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the remaining portions of the information at issue, which were not found to be excepted from disclosure by either the Court's decision letter of March 1, 2018, or by Attorney General Open Records Letter Rulings OR2016-05287 or OR2016-05982, are not excepted from required disclosure and may not be withheld. The City of Abilene shall RELEASE all such remaining information at issue.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, consistent with the above orders:

- 1) Plaintiffs Susan Lewis King and Austin King, M.D.'s Motion for Summary Judgment against Defendants Ken Paxton, Attorney General of Texas, and The City of Abilene, Texas is hereby GRANTED IN PART AND DENIED IN PART as indicated above.
- 2) Defendant Ken Paxton, Attorney General of Texas's Cross-Motion for Summary Judgment is hereby GRANTED IN PART AND DENIED IN PART as indicated above.

- 3) Intervenor Abilene-Sweetwater Broadcasting Company d/b/a KTXS TV's Cross-Motion for Summary Judgment is hereby GRANTED IN PART AND DENIED IN PART as indicated above.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that:

- 1) Plaintiffs Susan Lewis King and Austin King, M.D.'s request for reasonable costs and attorneys' fees is hereby DENIED.
- 2) Defendant Ken Paxton, Attorney General of Texas's request for attorney's fees is hereby DENIED.

By virtue of Plaintiffs Susan Lewis King and Austin King, M.D. and the City of Abilene's Rule 11 Agreement, Defendant City of Abilene's Cross-Motion for Summary Judgment is MOOT.

All other relief prayed for, but not granted herein, is denied. This order disposes of all claims and all parties and is an appealable final order.

Signed on this 3rd day of April, 2018.



JUDGE LORA J. LIVINGSTON
PRESIDING DISTRICT JUDGE

AGREED AS TO FORM:



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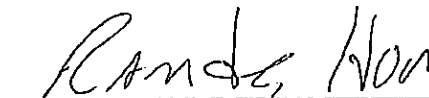
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