



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

July 13, 2016

Mr. Stephen D. Gates  
Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702

OR2016-15806

Dear Mr. Gates:

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# 618282 (City ID# 19398).

The City of Midland (the "city") received a request for a specified police report. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.1175 of the Government Code.<sup>1</sup> 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. This section 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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 682. 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

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<sup>1</sup>Although you raise section 552.117 of the Government Code, we note section 552.1175 of the Government Code is the proper exception to raise for information held by the city in a law enforcement, rather than an employment, context.

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>2</sup> *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. We note the requestor has a right of access to her information that is otherwise protected under common-law privacy under section 552.023 of the Government Code. See Gov't Code § 552.023(a); Open Records Decision No. 481 at (4) (1987) (privacy theories not implicated when individuals request information concerning themselves). Upon review, we find the city must withhold the date of birth of the public citizen other than the requestor under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>3</sup> However, we find you have failed to demonstrate any portion of the remaining information is highly intimate or embarrassing to an individual other than the requestor and not of legitimate public interest. Therefore, the city may not withhold any portion of the remaining information from this requestor under section 552.101 in conjunction with common-law privacy.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, 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. See Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure." *Id.* § 552.1175(a)(1). Upon review, we find the city must withhold the information we have marked under section 552.1175 if the individual to whom this information pertains is currently a licensed peace officer and elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code. However, the city may not withhold the information we have marked under section 552.1175 if the individual is not currently a licensed peace officer, or no election is made. We find no portion of the remaining information is subject to section 552.1175, and it may not be withheld on that basis.

In summary, the city must withhold the date of birth of the public citizen other than the requestor under section 552.101 of the Government Code in conjunction with common-law privacy and the information we have marked under section 552.1175 if the individual to

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<sup>2</sup>Section 552.102(a) exempts 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).

<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of the information at issue.

whom this information pertains is currently a licensed peace officer and elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code. The city must release the remaining information to this requestor.<sup>4</sup>

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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 618282

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note the requestor has a special right of access to some of the information being released. See Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the city receives another request for this information from a different requestor, then the city must again seek a decision from this office.