



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 7, 2016

Ms. S. McClellan  
Assistant City Attorney  
Criminal Law & Police Division  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2016-27069

Dear Ms. McClellan:

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# 636910 (DPD Request No. 2016-20031).

The Dallas Police Department (the "department") received a request for information related to three specified motor vehicle accidents.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.1085, and 552.130 of the Government Code.<sup>2</sup>

---

<sup>1</sup>You 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).

<sup>2</sup>Although you do not raise section 552.1085 of the Government Code in your brief, we understand you to raise this exception based on the substance of your arguments. Further, we note the department failed to comply with its procedural obligations under the Act. *See* Gov't Code § 552.301(b). However, because sections 552.101, 552.1085, and 552.130 of the Government Code can provide compelling reasons to withhold information, we will address the applicability of these exceptions to the information at issue. *Id.* § 552.302.

We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

Initially, we note you seek to withhold the telephone numbers of 9-1-1 callers under section 772.318 of the Health and Safety Code. In Open Records Letter No. 2011-17075 (2011), this office issued a previous determination to the department authorizing it to withhold the originating telephone number of a 9-1-1 caller furnished to the department by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code without requesting a decision from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673(2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Provided the originating telephone numbers of the 9-1-1 callers at issue were furnished by a service supplier established in accordance with chapter 772, the department must withhold the telephone numbers you have marked in accordance with the previous determination issued in Open Records Letter No. 2011-17075.

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 information made confidential by other statutes, such as section 58.007 of the Family Code. Section 58.007 provides, in pertinent part, as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

---

<sup>3</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Fam. Code § 58.007(c). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the conduct at issue. *See id.* § 51.02(2). Upon review, we find the information at issue does not identify a juvenile suspect or offender for purposes of section 58.007. Accordingly, we find the department has not demonstrated the applicability of section 58.007(c) of the Family Code to the information you have marked. Thus, the department may not withhold the information at issue under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is 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. This office has concluded some kinds of medical information are generally intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Additionally, 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.<sup>4</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, however, that one of the dates of birth belongs to a deceased individual. 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. Accordingly, the date of birth of the deceased individual may not be withheld on common-law privacy grounds. *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

---

<sup>4</sup>Section 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).

department must withhold all dates of birth pertaining to living public citizens, as well as the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the department failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the department may not withhold the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.1085 of the Government Code provides, in pertinent part, the following:

(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). You argue the submitted photographs consist of sensitive crime scene images. We understand the information relates to a criminal case that is now closed. Further, you do not indicate any of the exceptions in section 552.1085 apply in this instance. Upon review, we agree the photographs we have indicated consist of sensitive crime scene images for purposes of section 552.1085. Therefore, the department must withhold the photographs we have indicated under section 552.1085(c) of the Government Code. We find the remaining information at issue does not consist of sensitive crime scene images for purposes of section 552.1085 of the Government Code and may not be withheld on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, drivers 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(a). We note the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, motor vehicle record information that pertains solely to deceased individuals may not be withheld under section 552.130. *See Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229, H-917; ORD 272 at 1. Upon review, we find some of the motor vehicle record information at issue pertains to an individual who is deceased. Accordingly, with the exception of the information pertaining to the deceased individual, which we have marked for release, the city must withhold the motor vehicle record information it has marked, as well as the additional information we have marked, in the submitted information under section 552.130 of the Government Code. Further, the department must withhold the discernible license plates in the submitted photographs under section 552.130 of the Government Code.

In summary, provided the originating telephone numbers of the 9-1-1 callers at issue were furnished by a service supplier established in accordance with chapter 772, the department must withhold the telephone numbers you marked in accordance with the previous determination issued in Open Records Letter No. 2011-17075. The department must withhold all dates of birth pertaining to living public citizens, as well as the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the photographs we have indicated under section 552.1085(c) of the Government Code. With the exception of the information we have marked for release, the city must withhold the motor vehicle record information it has marked, as well as the additional information we have marked, under section 552.130 of the Government Code. Further, the department must withhold the discernible license plates in the submitted photographs under section 552.130 of the Government Code. The remaining information must be released.

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,



Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/som

Ref: ID# 636910

Enc. Submitted documents

c: Requestor  
(w/o enclosures)