



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 9, 2016

Ms. Derenda Rush
Service Division
Amarillo Police Department
200 S.E. Third Avenue
Amarillo, Texas 79101-1514

OR2016-27292

Dear Ms. Rush:

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# 637264.

The Amarillo Police Department (the "department") received a request for information related to a specified incident. The department released information responsive to the request but made redactions as permitted by section 552.130 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. *See id.* § 552.130(c)–(e). We have considered the department's position and reviewed the information.

Initially, we understand the department redacted dates of birth from the information released to the requestor. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue or a statute authorizes the governmental body to make such redactions. *See Gov't Code* § 552.301(a), (e)(1)(D). You do not assert, nor does our review of the records indicate, you have been authorized to withhold this information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2001). In the future, the department

should refrain from redacting any information that it is not authorized to withhold in seeking an open records ruling.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ Gov’t Code § 552.101. 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.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. Thus, the department must withhold all public citizens’ dates of birth 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, a motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country. Gov’t Code § 552.130(a). We note section 552.130 is intended to protect individual privacy interests, so the requestor has a right of access to her own 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 may not withhold any of the motor vehicle record information pertaining to the vehicle owned by the requestor at the time of her request for information. *See* Gov’t Code § 552.130(d) (providing in part, “attorney general shall promptly render a decision . . . determining whether the redacted or withheld information *was* excepted from required disclosure to the requestor . . .” (emphasis added)). However, we find the department must

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. 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).

withhold the remaining motor vehicle record information you marked under section 552.130 of the Government Code.

In summary, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code and common-law privacy. With the exception of motor vehicle record information pertaining to the vehicle owned by the requestor at the time of her request for information, the department must withhold the remaining information you have marked under section 552.130 of the Government Code.

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,



Joseph Behrke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 637264

Enc. Submitted documents

c: Requestor
(w/o enclosures)