



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 17, 2017

Ms. Catherine Zellers  
City Attorney's Office  
City of Weatherford  
P.O. Box 255  
Weatherford, Texas 76086

OR2017-05580

Dear Ms. Zellers:

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# 649413 (Ref. Nos. W000426-123016 and W000428-010217).

The Weatherford Police Department (the "department") received two requests for video and audio recordings pertaining to a specified incident.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte*

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<sup>1</sup>You state the department sought and received clarification of the second request. *See* Gov't Code § 552.222 (providing 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 a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

*Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state Exhibits D, E, F, and G pertain to a pending criminal investigation or prosecution. Based upon your representation, we conclude release of the information at issue will interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we find the department may withhold Exhibits D, E, F, and G under section 552.108(a)(1) of the Government Code.

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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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.<sup>2</sup> *Tex. 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. Upon review, we find the public citizens’ dates of birth you have indicated within the remaining audio recording are subject to section 552.101 of the Government Code in conjunction with common-law privacy. You state the department does not have the technological capability to redact the dates of birth from the remaining audio recording. However, because the department had the ability to copy the submitted audio recording for our review, we believe department has the capability to produce a copy of only the non-confidential portions of the audio recording. Accordingly, the department must withhold the public citizens’ dates of birth you have indicated within the remaining audio recording 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 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* Gov’t Code § 552.130. You assert the remaining audio recording contains motor vehicle record information that is excepted from disclosure under section 552.130. You state the department does not possess the technological capability to

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<sup>2</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).

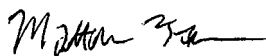
redact information from audio files. However, as mentioned above, because you had the ability to copy the submitted audio recording in order to submit it for our review, we believe the department has the capability to produce a copy of only the non-confidential portions of the audio recording. Accordingly, the department must withhold audible motor vehicle record information, which we have indicated, within the remaining audio recording under section 552.130 of the Government Code.

In summary, the department may withhold Exhibits D, E, F, and G under section 552.108(a)(1) of the Government Code. The department must withhold the public citizens' dates of birth you have indicated within the remaining audio recording under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold all audible motor vehicle record information within the remaining audio recording under section 552.130 of the Government Code. The department must release the remaining information.

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,



Matthew Taylor  
Assistant Attorney General  
Open Records Division

MHT/bw

Ref: ID# 649413

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)