



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 12, 2017

Mr. Thomas A. Leeper  
Assistant City Attorney  
City of Bryan  
P.O. Box 1000  
Bryan, Texas 77805

OR2017-10239

Dear Mr. Leeper:

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# 657414.

The Bryan Police Department (the "department") received a request for thirteen categories of information pertaining to a motor vehicle accident involving the requestor's client. You state you have released some information. You state the department will withhold social security numbers pursuant to section 552.147(b) of the Government Code.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. 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. 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. The court of

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<sup>1</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b).

appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *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.). However, we note the requestor has a right of access to her client's date of birth. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the department must withhold all public citizens' dates of birth, other than the date of birth of the requestor's client, under section 552.101 of the Government Code in conjunction with common-law privacy.

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* Gov't Code § 552.130. We note section 552.130 protects personal privacy. We further note some of the motor vehicle record information we have marked may belong to the requestor's client, and, as such, the requestor may have a right of access to such information. *See id.* § 552.023(a); ORD 481 at 4. However, because we are unable to determine whether some of the information at issue belongs to the requestor's client, we must rule conditionally. To the extent the motor vehicle record information we marked belongs to the requestor's client, the department may not withhold it under section 552.130. To the extent the motor vehicle record information we marked does not belong to the requestor's client, the department must withhold it under section 552.130 of the Government Code.

In summary, the department must withhold all public citizens' dates of birth, other than the date of birth of the requestor's client, under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the motor vehicle record information we marked does not belong to the requestor's client, the department must withhold it under section 552.130 of the Government Code. The department must release the remaining information.<sup>2</sup>

Finally, although you ask this office to issue a previous determination permitting the department to withhold dates of birth, we note that in Open Records Letter No. 2017-07737 (2017) this office already issued a previous determination to the department authorizing it to withhold dates of birth of living individuals under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office. *See id.* § 552.301(a) (allowing governmental body to withhold information subject

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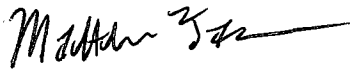
<sup>2</sup>We note the requestor has a right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the department receives another request for the same information from a different requestor, the department must again seek a decision from this office.

to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301 (a) 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](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# 657414

Enc. Submitted documents

c: Requestor  
(w/o enclosures)