



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 30, 2017

Ms. Captoria Brown
Paralegal
City of Carrollton
1945 East Jackson
Carrollton, Texas 75006

OR2017-11719

Dear Ms. Brown:

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# 659624 (City ID# 9770).

The Carrollton Police Department (the "department") received a request for information pertaining to a specified incident.¹ You state you have released some information. We understand you have redacted personal e-mail addresses pursuant to the previous determination issued in Open Records Decision No. 684 (2009).² You claim the submitted information is excepted from disclosure under sections 552.101 and 552.1085 of the Government Code.³ Additionally, you provide documentation showing you have notified an individual of the right to submit comments to this office regarding why some of the

¹We note we asked the department to provide additional information pursuant to section 552.303 of the Government Code. *See* Gov't Code § 552.303(c)-(d) (if attorney general determines that information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). We have received and considered the information submitted by the department pursuant to that request.

²Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

³Although you do not raise section 552.101 of the Government Code in your brief, we understand you to raise this exception based on your markings.

submitted information should not be released.⁴ See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). 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.” *Id.* § 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 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.). Thus, the department must withhold the public citizens’ dates of birth you marked under section 552.101 of the Government Code.

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 information consists of sensitive crime scene images. You indicate the information relates to a criminal case that is now closed. You do not indicate any of the exceptions in section 552.1085 apply in this instance. Upon review, we agree the photographs we have marked consist of sensitive crime scene images for purposes of section 552.1085. Therefore, the department must withhold the photographs we have marked under section 552.1085(c) of the Government Code. However, we find the remaining information 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.

⁴As of the date of this letter, this office has not received comments from any third party explaining why any of the submitted information should not be released.

We note some of the remaining information is subject to section 552.130 of the Government Code.⁵ Section 552.130 of the Government Code provides 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 Texas or another state or country is excepted from public release. *Id.* § 552.130(a). We conclude the department must withhold the information we have marked under section 552.130 of the Government Code.

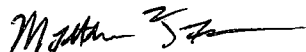
We note the requestor is a representative of the United States Department of Labor Occupational Safety and Health Administration. However, this requestor has not cited to any specific provision, nor are we aware of any such law, that provides her with a right of access to the submitted information. Therefore, we find this requestor has failed to demonstrate any such release provisions are applicable in this instance.

In summary, the department must withhold the public citizens' dates of birth you marked under section 552.101 of the Government Code. The department must withhold the photographs we have marked under section 552.1085(c) of the Government Code. The department must withhold the information we have marked 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, 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

⁵The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 659624

Enc. Submitted documents

c: Requestor
(w/o enclosures)