



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 27, 2017

Ms. Stacie S. White  
Counsel for City of Benbrook  
Taylor, Olson, Adkins, Sralla, Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2017-14244

Dear Ms. White:

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# 664600.

The City of Benbrook (the "city"), which you represent, received a request for information pertaining to a specified investigation.<sup>1</sup> The city claims the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

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. Some of the submitted video recordings contain motor vehicle record information that is subject to section 552.130. The city states it lacks the technical capability to redact this information from the video recordings. Based on this representation, we agree the city must withhold the video

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<sup>1</sup>The city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (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) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

recordings, which we have marked, in their entireties under section 552.130.<sup>2</sup> The city must also withhold the motor vehicle record information it has marked in the remaining documents under section 552.130. However, the remaining information does not contain motor vehicle record information or information pertaining to a personal identification document issued by a Texas agency or another state or country or a local agency authorized to issue an identification document. Therefore, the city may not withhold the remaining information under section 552.130.

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 Third Court of Appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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 remaining video recordings contain a date of birth of a living person and, as noted above, the city states it lacks the technical capability to redact this information from the video recordings at issue. Thus, the city must withhold the remaining video recordings in their entireties under section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold the information it has marked in the remaining documents on that ground.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. This section encompasses the doctrine of constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual’s autonomy within “zones of privacy,” which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual’s privacy interests and the public’s need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the “most intimate aspects of human affairs.” *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). We note the right to privacy is a personal right that lapses at death and therefore may not be asserted solely on behalf of a deceased individual. *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.); Open Records Decision No. 272 (1981) (privacy rights lapse upon death). However, the United States Supreme Court has determined surviving family members can have a privacy interest in

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<sup>2</sup>As our ruling is dispositive, we do not address the other arguments of the city to withhold this information.

information relating to their deceased relatives. See *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157 (2004).

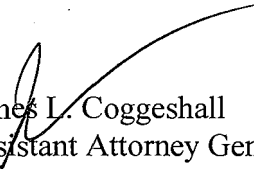
Because the remaining information at issue relates to a deceased individual, it may not be withheld to protect that individual's privacy interest. In addition, as of the date of this decision, we have not received correspondence from the deceased individual's family requesting the information at issue be withheld.<sup>3</sup> Thus, we have no basis for determining the family has a privacy interest in the information at issue. Therefore, the city may not withhold the remaining information under section 552.101 in conjunction with constitutional privacy.

To conclude, the city must withhold the following: (1) the entireties of the video recordings we have marked under section 552.130 of the Government Code; (2) the entireties of the remaining video recordings under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the information it has marked in the remaining documents under section 552.130 of the Government Code and under section 552.101 of the Government Code in conjunction with common-law privacy. The city 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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/bw

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<sup>3</sup>We note in this regard this office received a letter from the city dated June 13, 2017, concerning the withholding of photographs of the deceased. Upon review of this letter, we find it does not contain a request from a family member to withhold information under constitutional privacy for purposes of the holding in *Favish*.

Ref: ID# 664600

Enc. Submitted documents

c: Requestor  
(w/o enclosures)