



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 26, 2017

Ms. Alexis G. Allen  
Counsel for the City of Red Oak  
Nichols, Jackson, Dillard, Hager & Smith, LLP  
500 North Akard Street, Suite 1800  
Dallas, Texas 75201

OR2017-24499

Dear Ms. Allen:

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# 682252 (Reference # 89527).

The Red Oak Police Department (the "department"), which you represent, received a request for information related to a specified incident. You state you have released some information to the requestors, including the CR-3 crash report pursuant to section 550.065 of the Transportation Code. *See* Transp. Code § 550.065(c) (providing for release of accident report to person or entity listed under this subsection). You claim some of the submitted information is excepted from disclosure under section 552.130 of the Government Code. We have considered the exception 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."<sup>1</sup> Gov't Code § 552.101. Section 552.101 of the Government Code 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

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<sup>1</sup>The 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).

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 date of birth we marked 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. The department asserts, and we agree, the submitted video recordings contain motor vehicle record information that is excepted from disclosure under section 552.130 of the Government Code. In this instance, the department states it does not possess the technological capability to redact information from video files. Thus, the department must withhold the motor vehicle record information we marked and the submitted video recordings in their entireties under section 552.130 of the Government Code. *See Open Records Decision No. 364 (1983)*.

We further note the submitted audio recordings contain motor vehicle record information. The separate audio recordings are not intertwined with the video recordings. You state the department does not have the technological capability to redact information from the submitted audio recordings. However, because the department had the capability to copy the separate audio recordings in order to submit the requested information for our review, we believe the department has the capacity to produce a copy of only the non-confidential portions of the audio recordings. Therefore, the department may not withhold the separate audio recordings in their entirety. Nevertheless, the department must withhold the information we have indicated in the audio recordings under section 552.130 of the Government Code.

In summary, the department must withhold the date of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we marked, the submitted video recordings in their entireties, and the information we have indicated in the audio recordings under section 552.130 of the Government Code. The remaining information must be released.<sup>2</sup>

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.

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<sup>2</sup>We note the requestor has a right of access to some of the information being released. *See Gov't Code* § 552.023(a); *Open Records Decision No. 481 at 4 (1987)* (privacy theories not implicated when individuals request information concerning themselves). Thus, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

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,



Emily Buchanan  
Attorney  
Open Records Division

EB/eb

Ref: ID# 682252

Enc. Submitted documents

c: Requestor  
(w/o enclosures)