



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 8, 2017

Ms. Kristen Mills
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2017-25609

Dear Ms. Mills:

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# 689678 (PIR# 9807).

The Baytown Police Department (the "department") received a request for a specified police report. You state you have released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.137 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. This section 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.). We note the requestor has a special right of access to her own information that would ordinarily be withheld to protect her privacy interests. *See* Gov't Code § 552.023(a) ("[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is 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). Accordingly, the department may not withhold from this requestor information pertaining to herself under section 552.101

in conjunction with common-law privacy. Upon review, we find the department must withhold the public citizen's date of birth you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). The e-mail address at issue is not of the type specifically excluded by section 552.137(c). *See id.* § 552.137(c). Accordingly, the department must withhold the e-mail address you have marked under section 552.137 of the Government Code unless the owner of the address affirmatively consents to its release.

In summary, the department must withhold the public citizen's date of birth you have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the e-mail address you have marked under section 552.137 of the Government Code unless the owner of the address affirmatively consents to its release. The department must release the remaining information.¹

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/tdw

¹We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a); ORD 481 at 4. Thus, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

Ref: ID# 689678

Enc. Submitted documents

c: Requestor
(w/o enclosures)