



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 8, 2018

Mr. Benjamin L. Stool
Counsel for the Town of Highland Park
Boyle & Lowry, L.L.P.
P.O. Box 855
Mount Vernon, Texas 75457

OR2018-00533

Dear Mr. Stool:

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# 690777.

The Town of Highland Park (the "town"), which you represent, received a request for a specified arrest warrant affidavit involving the requestor's client.¹ You claim the submitted information is excepted from disclosure under section 552.101 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." Gov't Code § 552.101. Section 552.101 encompasses information other statutes make confidential. You claim the submitted information must be withheld under section 552.101 in conjunction with article 15.26 of the Code of Criminal Procedure, which is applicable to arrest warrants and affidavits for arrest warrants. Article 15.26 requires a magistrate's clerk to make a copy of the arrest warrant affidavit available for public inspection or to provide a

¹We note the town did not comply with the requirements of section 552.301 of the Government Code in requesting a ruling from this office. See Gov't Code § 552.301(b), (e). Nevertheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301, we will consider your claim under this section. See *id.* §§ 552.007, .302.

copy on payment of the cost of providing a copy. We note, however, article 15.26 of the Code of Criminal Procedure does not make information confidential for the purposes of section 552.101 of the Government Code. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public); *see also* Open Records Decision No. 525 at 4 (1989) (information cannot be withheld from public disclosure by negative implication simply because a statute designates other specific information as public information). Therefore, the town may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with article 15.26 of the Code of Criminal Procedure.

Section 552.101 of the Government Code also 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 information at issue contains the date of birth of the requestor's client. The requestor has a right of access to his client's date of birth and the town may not withhold it from him on the basis of common-law privacy. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, with the exception of the date of birth of the requestor's client, the town must withhold the public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions to disclosure, the town must release the remaining information to this requestor.²

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/>

²We 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 town receives another request for the same information from a different requestor, the town must again seek a decision from this office.

[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,

A handwritten signature in black ink, appearing to read "Tim Neal". The signature is written in a cursive style with a large initial "T" and a long horizontal stroke at the end.

Tim Neal
Assistant Attorney General
Open Records Division

TN/tdw

Ref: ID# 690777

Enc. Submitted documents

c: Requestor
(w/o enclosures)