



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 7, 2019

Ms. Amanda Pell  
Open Records Specialist  
Baytown Police Department  
3200 North Main Street  
Baytown, Texas 77521

OR2019-00281

Dear Ms. Pell:

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# 744942 (PIR# 12476).

The Baytown Police Department (the "department") received a request for the complete case file in a specified investigation.<sup>1</sup> You argue a portion of the submitted information is not responsive to the request. You also claim some of the submitted information is excepted from disclosure under section 552.1085 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you assert a portion of the submitted information is not responsive to the request for information. Upon review, we note the Act requires a governmental body to make a good-faith effort to relate a request to information the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2

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<sup>1</sup>You inform us the requestor was required to make a deposit for payment of anticipated costs for the request under section 552.263 of the Government Code, which the department received on October 3, 2018. *See* Gov't Code § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that governmental body receives deposit or bond).

(1990), 534 at 2-3 (1989). We note the department submitted the information at issue as potentially responsive and it relates to the specified investigation. Because the department has submitted the information at issue for our review, we find the department has made a good-faith effort to submit information that is responsive to the request.

Section 552.1085 of the Government Code provides, in pertinent part:

(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 assert the photographs you indicated consist of sensitive crime scene images taken at a crime scene as part of a criminal case that is now closed. However, upon review, we find you have failed to establish any of the submitted photographs consist of sensitive crime scene images excepted from disclosure under section 552.1085. Thus, the department may not withhold any of the information at issue on that basis.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See id.* § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Some of the submitted photographs, which we have indicated, contain telephone numbers of individuals who may be subject to section 552.1175. Thus, the department must withhold the telephone numbers at issue under section 552.1175 only if such information (1) consists of a home telephone number or consists of a cellular telephone number and a governmental body does not pay for the cellular telephone service; (2) pertains to individuals who are subject to section 552.1175(a); and (3) the individuals whose information is at issue elect to restrict access to this information in accordance with section 552.1175(b). However, the department may not withhold this information under section 552.1175 if it does not consist of home telephone numbers; a governmental body pays for the cellular telephone service; the individuals to whom the information relates are not subject to section 552.1175(a); or, the individuals do not elect to restrict access to this information in accordance with section 552.1175(b) of the Government Code.

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 Third 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 all public citizens’ dates of birth 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 or 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. Gov’t Code § 552.130(a). Upon review, we find the department must withhold the discernible license plates, license plate numbers, vehicle identification numbers, and driver’s license information in the submitted photographs under section 552.130 of the Government Code.

In summary, the department must withhold the telephone numbers we have indicated under section 552.1175 of the Government Code only if such information (1) consists of a home telephone number or consists of a cellular telephone number and a governmental body does not pay for the cellular telephone service; (2) pertains to individuals who are subject to section 552.1175(a); and (3) the individuals whose information is at issue elect to restrict access to this information in accordance with section 552.1175(b). The department must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the discernible license plates, license plate numbers, vehicle identification numbers, and driver’s license information in the submitted photographs 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](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,



Kelly McWethy  
Assistant Attorney General  
Open Records Division

KSM/mo

Ref: ID# 744942

Enc. Submitted documents

c: Requestor  
(w/o enclosures)