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ATTORNEY GENERAL OF TEXAS

January 23, 2019

Ms. Jessika J. Velasquez
Counsel for the Watauga Police Department
Evans Daniel Moore Evans Biggs & Decker
115 West Second Street, Suite 202
Fort Worth, Texas 76102

OR2019-02022

Dear Ms. Velasquez:

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# 747210 (ORR# 18-593).

The Watauga Police Department (the "department"), which you represent, received a request for a specified incident report. The department claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ We have considered the claimed exceptions 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 the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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.). However, this office has also found the public has a legitimate public interest in the details of a crime. *See Open Records Decision No. 400* at 4 (1983). *See generally Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting "legitimate public interest in facts tending to support an allegation of criminal activity" (citing *Cinel v. Connick*, 15

¹We understand the department to raise section 552.130 based on its markings.

F.3d 1338, 1345-46 (1994)). We agree the department must withhold the submitted dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, none of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the remaining information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.

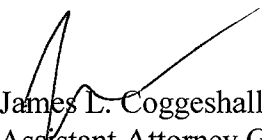
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. The department must withhold the motor vehicle record information it has marked, as well as the information we have marked, under section 552.130 of the Government Code.

In summary, the department must withhold the submitted dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the information marked 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, 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/gw

Ref: ID# 747210

Enc. Submitted documents

c: Requestor
(w/o enclosures)