



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 20, 2019

Ms. Kayla Sweet  
Records  
Van Alstyne Police Department  
P.O. Box 247  
Van Alstyne, Texas 75495

OR2019-07799

Dear Ms. Sweet:

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# 763290.

The Van Alstyne Police Department (the "department") received a request for a specified arrest report. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have redacted information from the submitted documents. We understand you have redacted motor vehicle record information pursuant to section 552.130(c) of the Government Code.<sup>1</sup> However, you have redacted additional information. You do not assert, nor does our review of our records indicate, you have been granted a previous determination to withhold this type of information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2000). In this instance, we are able to discern the nature of the information that has been redacted; thus, being deprived of that information does not inhibit our ability to make a ruling.

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<sup>1</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted information be released. See Gov't Code § 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested"); *id.* § 552.302. Thus, in the future, the department should refrain from redacting, without authorization, any information it submits to this office in seeking an open records ruling.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses the informer's privilege, which has long been recognized by Texas courts. *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. See Open Records Decision No. 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988). The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

You state some of the submitted information identifies a complainant who reported possible violations of criminal law to the department. Upon review, we conclude you have demonstrated the applicability of the common-law informer's privilege to some of the information at issue. Therefore, with the exception of the information we have marked for release, the department may withhold the information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, we find you have failed to demonstrate the remaining information at issue identifies a complainant for purposes of the informer's privilege. Thus, the department may not withhold any of the remaining information under section 552.101 on that basis.

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 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.). However, we note one of the dates of birth at issue relates to an individual who have been de-identified and whose privacy interests are thus protected. Accordingly, the department must withhold the identifiable public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of the information we have marked for release, the department may withhold the information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The department must withhold the identifiable public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. 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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/eb

Ref: ID# 763290

Enc. Submitted documents

c: Requestor  
(w/o enclosures)