



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 3, 2019

Chief Paul L. Campbell
Indian Lake Police Department
62 South Aztec Cove Drive
Indian Lake, Texas 78566

OR2019-09041

Dear Chief Campbell:

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# 757661 (Request #2019-01).

The Town of Indian Lake (the "town") received a request for complaints made against the requestor, as well as his reports made during a specified time period. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note the town has only submitted complaints. To the extent information responsive to the remainder of the request existed on the date the town received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

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 common-law physical safety exception. The Texas Supreme Court has recognized, for the first time, a common-law physical safety exception to required disclosure. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. &*

¹Although you do not raise section 552.101 of the Government Code in your brief, we understand you to assert this exception based on your argument.

Hearst Newspapers, L.L.C., 343 S.W.3d 112, 118 (Tex. 2011). Pursuant to this common-law physical safety exception, “information may be withheld [from public release] if disclosure would create a substantial threat of physical harm. *Id.* In applying this standard, the court noted “deference must be afforded” law enforcement experts regarding the probability of harm, but further cautioned, “vague assertions of risk will not carry the day.” *Id.* at 119.

We understand you to argue release of the personal information of the complainants may endanger the individuals at issue. However, upon review, we find the town has not demonstrated release of any of the submitted information would create a substantial threat of physical harm to the individuals at issue. Accordingly, no portion of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

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.). Thus, the town must withhold any identifiable public citizen’s date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The town 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,



Erin Groff
Assistant Attorney General
Open Records Division

EMG/jxd

Ref: ID# 757661

Enc. Submitted documents

c: Requestor
(w/o enclosures)