



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 25, 2019

Mr. Yael Forgey
City Secretary
City of Azle
613 Southeast Parkway
Azle, Texas 76020

OR2019-10935

Dear Mr. Forgey:

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# 762051 (Azle; AG 2019-01).

The City of Azle (the "city") received a request for information relating to a specified accident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the city failed to comply with section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Further, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). The city informs us it received the original request

for information on January 23, 2019. This office does not count the date the request was received or holidays for purposes of calculating a governmental body's deadlines under the Act. Accordingly, the city was required to provide the information required by section 552.301(b) by February 6, 2019. The city states, and provides documentation showing, it initially mailed the information required by section 552.301 on February 5, 2019, but the envelope was returned for postage due. Section 552.308 of the Government Code provides in pertinent part:

(a) When this subchapter requires a request, notice, or other document to be submitted or otherwise given to a person within a specified period . . . the requirement is met if the document is sent to the person by first class United States mail properly addressed with *postage prepaid* and:

- (1) it bears a post office cancellation mark indicating a time within that period; or
- (2) the person required to submit or otherwise give the document furnishes satisfactory proof that it was deposited in the mail within that period.

Id. § 552.308(a) (emphasis added). Once the error was discovered, the city mailed the information required by section 552.301 on February 19, 2019. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). As noted above, however, the city was required to mail the information required by section 552.301(b) no later than February 6, 2019. Accordingly, we find the city has failed to meet the elements of timeliness established by section 552.308(a). Consequently, we conclude the city failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The city claims sections 552.101, 552.108, and 552.130 of the Government Code for the submitted information. Because sections 552.101, 552.1175, 552.130, and 552.137 can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these sections

for the submitted information.¹ However, we find you have failed to establish a compelling reason to address your remaining exception.

Some of the submitted information may be subject to section 552.1175 of the Government Code. Section 552.1175 provides, in part, the following:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). We have marked and indicated information that relates to a peace officer. Accordingly, to the extent the information at issue pertains to a peace officer who elects to restrict access to his marked information in accordance with section 552.1175(b), the city must withhold the information we have marked and indicated under section 552.1175 of the Government Code.² Conversely, if the officer at issue does not elect to restrict access to his information in accordance with section 552.1175(b), the city may not withhold the information we have marked under section 552.1175.

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 of the Government Code also 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

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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.). We note the requestor is the authorized representative of one of the individuals and has a right of access to otherwise private information pertaining to the individual at issue pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Further, because "the right of privacy is purely personal," that right "terminates upon the death of the person whose privacy is invaded." *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) ("action for invasion of privacy can be maintained only by a living individual whose privacy is invaded" (quoting RESTATEMENT (SECOND) OF TORTS § 652I (1977)); Attorney General Opinions JM-229 (1984) ("the right of privacy lapses upon death"), H-917 (1976) ("We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death."); Open Records Decision No. 272 (1981) ("the right of privacy is personal and lapses upon death"). Thus, information pertaining solely to a deceased individual may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Accordingly, with the exception of the requestor's client's date of birth, the city must withhold all living individuals' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, the city has failed to demonstrate any of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the city may not withhold any of the remaining information 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 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 requestor has a right of access to the requestor's client's motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. We note the purpose of section 552.130 is to protect the privacy interests of individuals. Some of the driver's license information pertains solely to a deceased individual. Because the right of privacy lapses at

death, motor vehicle record information that pertains solely to a deceased individual may not be withheld under section 552.130. *See Moore*, 589 S.W.2d 489; Attorney General Opinions JM-229, H-917; ORD 272. We note the remaining recordings and photographs contain motor vehicle record information subject to section 552.130. Thus, with the exception of the requestor's client's motor vehicle record information or driver's license information pertaining solely to the deceased, the city must withhold the information we have marked and any audible or visible license plates in the remaining recordings and photographs under section 552.130 of the Government Code. However, you have failed to demonstrate any of the remaining information at issue is subject to section 552.130. Thus, the city may not withhold any of the remaining information at issue under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See Gov't Code* § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Upon review, we find the city must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, to the extent the information at issue pertains to a peace officer who elects to restrict access to his marked information in accordance with section 552.1175(b), the city must withhold the information we have marked and indicated under section 552.1175 of the Government Code. With the exception of the requestor's client's date of birth, the city must withhold all living individuals' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the requestor's client's motor vehicle record information or driver's license information pertaining solely to the deceased, the city must withhold the information we have marked and any audible or visible license plates in the remaining recordings and photographs under section 552.130 of the Government Code. The city must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The city must release the remaining information.³

³We note the information being released contains information to which the requestor has a right of access. *See Transp. Code* § 550.065(c); *Gov't Code* § 552.023; *see also* ORD 481 at 4. Accordingly, if the city receives another request for this same information from a different requestor, it must again seek a ruling from this office. Additionally, we note the remaining information includes social security numbers. Section 552.147(b) of the Government Code authorizes a government body to redact a living person's social security

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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/mo

Ref: ID# 762051

Enc. Submitted documents

c: Requestor
(w/o enclosures)