



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 15, 2019

Mr. Whitt L. Wyatt
Counsel for the City of Colleyville
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
500 North Akard, Suite 1800
Dallas, Texas 75201

OR2019-13035

Dear Mr. Wyatt:

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# 765508 (ORR# 106489).

The Colleyville Police Department (the "department"), which you represent, received a request for information pertaining to the requestor. The department claims the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, the department acknowledges, and we agree, it did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). 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). Because section 552.101

in conjunction with common-law privacy and section 552.130 can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these sections to the information at issue. However, we find the department has failed to establish a compelling reason to address its remaining arguments.

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. *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. *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 agree the department must withhold the date of birth it has marked 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. We agree the department must withhold the motor vehicle record information it has marked under section 552.130 of the Government Code.

In summary, the department must withhold the date of birth it has marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the information it has marked under section 552.130 of the Government Code. The department must release the remaining information.¹

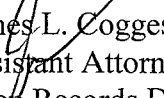
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

¹Because the requestor has a special right of access to some of the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

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/mo

Ref: ID# 765508

Enc. Submitted documents

c: Requestor
(w/o enclosures)