



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 4, 2019

Ms. Karen Strand
Senior Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2019-27827

Dear Ms. Strand:

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# 789399.

The Mesquite Police Department (the "department") received a request for information pertaining to a specified incident. You state the department will release some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You state the department will withhold the date of birth it marked pursuant to Open Records Letter No. 2015-24970 (2015).¹ 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. This section 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

¹ Open Records Letter No. 2015-24970 is a previous determination issued to the department authorizing it to withhold certain living public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

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). Further, the 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, we note the right to privacy is a personal right that lapses at death and the common-law right to privacy does not encompass information that relates only to a deceased individual. *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 Broad. 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 § 6521 (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 to a deceased individual may not be withheld on common-law privacy grounds.

Upon review, we find the information you marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, some of the information at issue may pertain to a deceased individual. Thus, to the extent the information you marked does not pertain to a deceased individual, the department must withhold it under section 552.101 of the Government Code in conjunction with common-law privacy. Conversely, to the extent the information you marked pertains to a deceased individual, the department may not withhold such information under section 552.101 on the basis of common-law privacy.

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See* Gov't Code § 552.130. We note section 552.130 protects privacy interests. As previously discussed, the right to privacy is a personal right that lapses at death. *See Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229, H-917; ORD 272. Accordingly, to the extent the motor vehicle record information you marked pertains to a living individual, the department must withhold it under section 552.130 of the Government Code. If the information you marked pertains to a deceased individual, then it may not be withheld under section 552.130.

Section 552.147(a) of the Government Code excepts from disclosure the social security number of a living person. *See* Gov't Code § 552.147(a). Thus, a social security number that pertains solely to a deceased individual may not be withheld under section 552.147. Accordingly, to the extent the social security number you marked pertains to a living individual, the department may withhold it under section 552.147 of the Government Code. However, if the social security number you marked pertains to a deceased individual, then the department may not withhold it under section 552.147.

In summary, to the extent the information you marked does not pertain to a deceased individual, the department must withhold it under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the motor vehicle record information you marked pertains to a living individual, the department must withhold it under section 552.130 of the Government Code. To the extent the social security number you marked pertains to a living individual, the department may withhold it under section 552.147 of the Government Code. The department must release the remaining information to this requestor.²

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Blake Brennan
Assistant Attorney General
Open Records Division

BBX/jxd

Ref: ID# 789399

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² We note the requestor has a special right of access to the information being released in this instance pursuant to section 261.201(k) of the Family Code. See Fam. Code § 261.201(k) (child victim of abuse has right of access to information otherwise confidential under section 261.201(a) of the Family Code), (1)(2) (providing any information excepted from required disclosure under the Act or other law must be withheld from disclosure). If the department receives another request for this information from a different requestor, the department must again seek a ruling from this office. See Gov't Code §§ 552.301, .302; Open Records Decision No. 673(2001).