



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 10, 2019

Mr. Joshua Goodwin
Waxahachie Police Department
630 Farley Street
Waxahachie, Texas 75165

OR2019-28563

Dear Mr. Goodwin:

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# 798252.

The Waxahachie Police Department (the "department") received a request for information related to a specified incident. The department claims some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.¹ We have considered the exceptions the department claims and reviewed the submitted representative sample of information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The department states the information at issue pertains to a case that concluded in a result other than conviction or deferred adjudication. Thus, the department may withhold the information it indicated under section 552.108(a)(2) of the Government Code.

¹ Although the department does not raise section 552.101 or section 552.130 of the Government Code in its brief, we understand the department to raise these exceptions based on its markings.

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.). 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 § 6521)); 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, with the exception of the dates of birth of the deceased individuals, the department must withhold all public citizens’ dates of birth 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 note the purpose of section 552.130 is to protect privacy. Because the right of privacy lapses at death, motor vehicle record information that pertains solely to the deceased individuals may not be withheld under section 552.130. *See Moore*, 589 S.W.2d at 491; Attorney General Opinions JM-229; H-917; ORD 272. Accordingly, with the exception of motor vehicle record information belonging solely to a deceased individual the department must withhold the motor vehicle record information it marked and the additional information we marked under section 552.130 of the Government Code.

In summary, the department may withhold the information it indicated under section 552.108(a)(2) of the Government Code. With the exception of the date of birth of the deceased individuals, the department must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of motor vehicle record information belonging solely to the deceased individuals, the department must withhold the motor vehicle record information it marked and the additional information we marked under section 552.130 of the Government Code. 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 <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,

A handwritten signature in black ink, appearing to read 'Jesse Harvey', written over a light blue horizontal line.

Jesse Harvey
Assistant Attorney General
Open Records Division

JHI/gw

Ref: ID# 798252

Enc. Submitted documents

c: Requestor
(w/o enclosures)