



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 26, 2019

Mr. Eric C. Farrar
Counsel for the City of Clear Lake Shores
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2019-33390

Dear Mr. Farrar:

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# 798595 (Reference No. CLS19-007).

The Clear Lake Shores Police Department (the "department"), which you represent, received a request for four categories of information pertaining to police officers and a specified offense. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.117(a)(2) of the Government Code applies to records a governmental body holds in an employment capacity and excepts from public disclosure the current and former home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal

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

Procedure. *Id.* We note section 552.117(a)(2) does not apply to information related to divorce. We have marked information that is subject to section 552.117(a)(2) of the Government Code. Accordingly, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code. However, no portion of the remaining information constitutes the home address, home telephone number, emergency contact information, social security number, or family member information of a peace officer. Accordingly, the department may not withhold any of the remaining information under section 552.117(a)(2).

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.). Thus, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 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. Accordingly, the department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code. The department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information you have 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

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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 cursive script that reads "Paige Lay".

Paige Lay
Assistant Attorney General
Open Records Division

PL/mo

Ref: ID# 798595

Enc. Submitted documents

c: Requestor
(w/o enclosures)