



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 7, 2020

Ms. Marie N. Johnson
Counsel for the City of Balch Springs
Messer, Fort & McDonald
6371 Preston Road, Suite 200
Frisco, Texas 75034

OR2020-00479

Dear Ms. Johnson:

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# 804851 (ORR# B100919JW).

The City of Balch Springs (the "city"), which you represent, received a request for information pertaining to a specified incident. The city claims the submitted information is excepted from disclosure under section 552.130 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note the city only submitted audio and video recordings. We assume, to the extent any additional responsive information existed when the city received the request for information, the city has released it. If not, then the city must do so immediately. *See Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).*

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 audio and video recordings contain motor vehicle record information that is subject to section 552.130. The city states

it lacks the technical capability to redact the information subject to section 552.130 from the recordings. Based on this representation, we agree the city must withhold the video recordings in their entireties under section 552.130 of the Government Code. Nevertheless, because the city had the ability to copy the audio recording in order to submit the requested information for our review, we believe the city has the capacity to produce a copy of only the non-confidential portions of it. Therefore, the city must withhold the audible driver's license numbers, license plate numbers, and their issuing states in the audio recording under section 552.130 of the Government Code. However, it may not withhold any of the remaining information on that ground.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ 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.). The city must withhold all audible public citizens' dates of birth in the audio recordings under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold the following: (1) the video recordings in their entireties under section 552.130 of the Government Code; (2) the audible driver's license numbers, license plate numbers, and their issuing states in the audio recording under section 552.130 of the Government Code; and (3) all audible public citizens' dates of birth in the audio recordings under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release the remaining information.

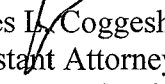
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jxd

Ref: ID# 804851

Enc. Submitted documents

c: Requestor
(w/o enclosures)