



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 17, 2020

Ms. Alma Lazdowski
PIA Clerk
City of Pflugerville
P.O. Box 679
Pflugerville, Texas 78691

OR2020-01609

Dear Ms. Lazdowski:

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# 806862 (ORR# W008988-100519).

The Pflugerville Police Department (the "department") received a request for a specified incident report. You state you have released some information to the requestor. You claim 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 exception you claim and reviewed the submitted information.

Initially, we must address the department's procedural obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). In this instance, you state the department received the initial request for information on October 5, 2019. We note the department sought clarification of the information requested and received clarification on October 12, 2019, which was a Saturday. Therefore, we consider the request as being received on the next business day, October 14, 2019. *See id.* § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good

¹ Although you do not assert section 552.130 of the Government Code in your brief, we understand you to assert this exception based on your markings.

faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). You do not inform us the department was closed on any business days between October 14, 2019, and October 28, 2019. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the department's ten-business-day deadline was October 28, 2019. We note the envelope in which the department provided the information required by section 552.301(b) is postmarked October 29, 2019. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the department failed to comply with the requirements of section 552.301 of the Government Code.

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). You claim sections 552.101, 552.108, and 552.130 of the Government Code for the submitted information. Because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these sections to the submitted information. However, we find you have failed to establish a compelling reason to address your remaining claimed exception.

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. *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 note the requestor has a right of access to her date of birth and the date of birth of her minor child pursuant to section 552.023 of the Government Code, and this information may not be withheld from her under common-law privacy. *See* Gov't Code § 552.023(a); ORD 481 at 4 (privacy theories not implicated when individuals request information concerning themselves). Nevertheless, the department must withhold the dates of birth not belonging to the requestor or her minor child 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 section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to her own motor vehicle

record information under section 552.023 of the Government Code and it may not be withheld from her under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Therefore, the department must withhold the motor vehicle record information you have marked and the additional information we have marked under section 552.130 of the Government Code.

In summary, the department must: (1) withhold the dates of birth not belonging to the requestor or her minor child under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the motor vehicle record information you have marked and the additional information we have marked under section 552.130 of the Government Code; and (3) 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/mo

Ref: ID# 806862

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² We note the requestor has a right of access to the information being released in this instance. *See* Fam. Code § 261.201(k) (parent of child victim of abuse or neglect 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); Gov't Code § 552.023(a); ORD 481 at 4. Accordingly, 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).