



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 7, 2020

Ms. Cecilia Gamez  
Crime Records Office  
McAllen Police Department  
P.O. Box 220  
McAllen, Texas 78501

OR2020-13013

Dear Ms. Gamez:

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# 826955.

The McAllen Police Department (the "department") received a request for information pertaining to a specified incident. You state the department has released the CR-3 Crash Report pursuant to section 550.065 of the Transportation Code. *See* Transp. Code § 550.065. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the department's obligations under the Act. Pursuant to section 552.301(b), a governmental body must ask for a decision and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). The department received the request for information on February 13, 2020. We understand the department was closed on February 17, 2020. 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. Thus, the department's ten-business-day deadline was February 28, 2020. However, the envelope in which the department provided the information required by section 552.301(b) was meter-marked March 2, 2020. Consequently, we find the department failed to comply with the requirements of section 552.301 in requesting a decision.

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). The department claims section 552.108 of the Government Code for the submitted information. We note portions of the submitted information may be subject to sections 552.101 and 552.130 of the Government Code.<sup>1</sup> Because sections 552.101 and 552.130 can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these sections for the submitted information. However, we find you have failed to establish a compelling reason to address your 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. 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 court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *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 information at issue includes the requestor’s client’s date of birth. The requestor has a right of access to this information. *See* Gov’t Code § 552.023(a) (person or person’s authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person’s privacy interests); ORD 481 at 4 (privacy theories not implicated when individual requests information concerning himself). Upon review, except for the requestor’s client’s date of birth, the department must withhold the 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 excepts from disclosure information that relates to a motor vehicle operator’s license or driver’s license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See* Gov’t Code § 552.130(a)(1)-(2). Upon review, we find the department must withhold the motor vehicle record information we marked and indicated and all audible license plate numbers and discernable license plates in the submitted video recordings under section 552.130 of the Government Code.

In summary, except for the requestor’s client’s date of birth, the department must withhold the public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we marked and indicated and all audible license plate numbers and

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<sup>1</sup> The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

discernable license plates in the submitted video recordings under section 552.130 of the Government Code. The remaining information must be released.

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,

Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/jxd

Ref: ID# 826955

Enc. Submitted documents

c: Requestor  
(w/o enclosures)