



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 8, 2020

Ms. Alicia K. Kreh
Counsel for the City of Boerne
Taylor, Olson, Adkins, Sralla, Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2020-13100

Dear Ms. Kreh:

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# 827002.

The City of Boerne (the "city"), which you represent, received a request for information pertaining to a specified incident. The city claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ We have considered the claimed exception and reviewed the submitted information.

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 submitted 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 video recordings. Based on this representation, we agree the city must withhold the

¹ We note the city did not comply with the requirements of section 552.301 of the Government Code for some of the submitted information. *See* Gov't Code § 552.301(e). Nevertheless, because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301, we will consider whether the information at issue must be withheld on those grounds.

submitted video recordings in their entirety under section 552.130 of the Government Code.² We agree the city must also withhold the remaining information it has marked, as well as the motor vehicle record information we have marked, under section 552.130.

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.). The city must withhold the dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold the submitted video recordings in their entirety and the information marked under section 552.130 of the Government Code. The city must also withhold the dates of birth in the remaining information 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 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/gw

² As our ruling is dispositive, we do not address the other argument of the city to withhold this information.

Ref: ID# 827002

Enc. Submitted documents

c: Requestor
(w/o enclosures)