



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 13, 2020

Mr. Joshua Goodwin
Waxahachie Police Department
630 Farley Street
Waxahachie Texas 75165

OR2020-17268

Dear Mr. Goodwin:

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# 836496.

The Waxahachie Police Department (the "department") received a request for a variety of information pertaining to a specified motor vehicle accident. The department informs us it has released some of the requested information, including the CR-3 crash report, and claims portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.¹ We have considered the exceptions the department claims and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The department states the submitted information pertains to a closed investigation that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to the submitted audio and video recordings, and this information may be withheld on that basis.

¹ Although the department did not raise sections 552.101 and 552.130 in its brief to our office, we understand the department to raise these exceptions based on its markings in the submitted documents.

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, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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 you have redacted dates of birth from the information released to the requestor. We also note the requestor has a right of access to his client’s date of birth and this information may not be withheld from him under common-law privacy. *See* Gov’t Code § 552.023(a) (“person or a person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is 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 herself). Thus, with the exception of the date of birth belonging to the requestor’s client, the department must withhold all 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 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(a). We note you have redacted motor vehicle and driver’s license information from the information released to the requestor. Because section 552.130 protects personal privacy, the requestor has a right of access to his client’s motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, with the exception of the requestor’s client’s driver’s license and motor vehicle record information, the department must withhold the driver’s license and motor vehicle record information it marked, as well as the state of issuance associated with the vehicle license number, under section 552.130 of the Government Code.

In summary, the department may withhold the submitted audio and video recordings under section 552.108(a)(2) of the Government Code. With the exception of the date of birth belonging to the requestor’s client, the department must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the requestor’s client’s driver’s license and motor vehicle record information, the department must withhold the driver’s license and motor vehicle record information it marked, as well as the state of issuance associated with the vehicle license number, under section 552.130 of the Government Code.

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,

Michael Pearle
Assistant Attorney General
Open Records Division

MP/jlbm

Ref: ID# 836496

Enc. Submitted documents

c: Requestor
(w/o enclosures)