



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 15, 2020

Ms. Nicole Warren
Deputy City Attorney
City of Temple
2 North Main Street, Suite 308
Temple, Texas 76501

OR2020-23320

Dear Ms. Warren:

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# 843857.

The Temple Police Department (the "department") received a request for a specified incident report that involves a named individual. The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

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, 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 the *Industrial Foundation* decision. *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.). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entirety of the requested information must be withheld to protect the individual's privacy. The requestor knows the identity of the victim. Accordingly, the department generally must withhold the submitted

information in its entirety under section 552.101 in conjunction with common-law privacy. However, the requestor may be acting as the authorized representative of the individual at issue or her estate, if the individual is deceased. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves); *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.) (“the right of privacy is purely personal” and “terminates upon the death of the person whose privacy is invaded”); Open Records Decision No. 272 (1981) (“the right of privacy is personal and lapses upon death”). In either instance, the submitted information may not be withheld in its entirety, the department must withhold the submitted dates of birth of living individuals under section 552.101 in conjunction with common-law privacy, and may not withhold any of the remaining information on this basis.

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.¹ *See* Gov't Code § 552.130. However, section 552.130 is designed to protect the privacy of individuals, and the right to privacy expires at death. *See Moore*, 589 S.W.2d at 491; ORD 272 at 1. The department must withhold the submitted driver's license numbers of living individuals under section 552.130 of the Government Code.

In summary, the department generally must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy; however, if the requestor is acting at the authorized representative of the individual at issue or her estate, or if the individual is deceased, the department must withhold the dates of birth of living individuals under section 552.101 of the Government Code in conjunction with common-law privacy, must withhold the submitted driver's license numbers of living individuals under section 552.130 of the Government Code, and must release the remaining information.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

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).

² We note the information at issue contains social security numbers of living individuals. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

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/mo

Ref: ID# 843857

Enc. Submitted documents

c: Requestor
(w/o enclosures)