September 28, 2021

Mr. David V. Overcash  
Counsel for the City of Princeton  
Wolfe, Tidwell & McCoy, LLP  
2591 Dallas Parkway, Suite 300  
Frisco, Texas 75034

Dear Mr. Overcash:

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# 907196 (City File No. W026315-070821).

The Princeton Police Department (the “department”), which you represent, received a request for fourteen categories of information related to a specified incident. You state you have released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.1

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s or 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. Gov’t Code § 552.130(a). We note, because section 552.130 protects privacy interests, the requestor has a right of access to her client’s own motor vehicle record information pursuant to section 552.023 of the Government Code. See id. § 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.

1 We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.
intended to protect that person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Upon review, we find some of the submitted video recordings contain motor vehicle record information not belonging to the requestor’s client. In this instance, you state the department does not possess the technological capability to redact information from video files. Thus, we agree the department must withhold the video recordings we have indicated in their entireties, the motor vehicle record information you have marked, and the additional information we have marked under section 552.130 of the Government Code.2 See Open Records Decision No. 364 (1983). However, you have failed to demonstrate any of the remaining information at issue is subject to section 552.130. Thus, the department may not withhold any of the remaining information at issue under section 552.130 of the Government Code.

Section 552.101 of the Government 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 the requestor has a right of access to her client’s otherwise private information, and this information may not be withheld from her under common-law privacy. See Gov’t Code § 552.023(a); ORD 481 at 4. Thus, the department must withhold the dates of birth you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate any of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must: (1) withhold the video recordings we have indicated in their entireties, the motor vehicle record information you have marked, and the additional information we have marked under section 552.130 of the Government Code; (2) withhold the dates of birth you have marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) release the remaining information to this requestor.

Finally, you ask this office to issue a previous determination permitting the department to withhold public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. See Gov’t Code § 552.301(a) (allowing

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2 As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.
governmental body to withhold information subject to previous determination); Open
Records Decision No. 673 (2001). After due consideration, we have decided to grant the
request on this matter. Therefore, this letter ruling authorizes the department to withhold
the dates of birth of public citizens under section 552.101 of the Government Code in
conjunction with common-law privacy. We note common-law privacy is a personal right
that lapses at an individual’s death. See 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.); see also Open
Records Decision Nos. 620 (1993), 272 (1981), 192 (1978). Thus, this previous
determination authorizes the department to withhold dates of birth of living individuals.
This previous determination is not applicable to dates of birth belonging to deceased
individuals. We also note a person or a person’s authorized representative has a special
right of access under section 552.023 of the Government Code to information that is
protected from public disclosure by laws intended to protect the person’s privacy interests.
See Gov’t Code § 552.023(a); ORD 481 at 4. Consequently, this previous determination is
not applicable to dates of birth requested by a person or the authorized representative of a
person whose date of birth is at issue. Furthermore, information filed with a court is not
protected by common-law privacy. See Gov’t Code § 552.022(a)(17); Star-Telegram v.
Walker, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed
document). Accordingly, this previous determination is not applicable to dates of birth
contained in court-filed documents. So long as the elements of law, fact, and circumstances
do not change so as to no longer support the findings set forth above, the department need
not ask for a decision from this office again with respect to this type of information. See
ORD 673 at 7-8 (listing elements of second type of previous determination under Gov’t
Code § 552.301(a)).

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# 907196

Enc. Submitted documents

c: Requestor
  (w/o enclosures)