



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 11, 2022

Ms. Haley E. Napier
Assistant City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604-0060

OR2022-07442

Dear Ms. Napier:

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# 935382 (Ref. No. 21-2619).

The City of Abilene (the "city") received a request for a specified dashboard camera recording pertaining to a specified incident involving the requestor. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we have indicated, is not responsive to the present request for information because it does not consist of the dashboard camera recording specified in the request. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to the present request.¹

Next, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). The city received the present request for information on December 7, 2021. You do not inform us the city was closed for any business days

¹ As we are able to make this determination, we need not address your arguments against disclosure of this information.

between December 7, 2021, and December 21, 2021. Accordingly, the city was required to provide the information required by section 552.301(b) by December 21, 2021. However, the envelope in which the city provided the information required by section 552.301 was postmarked December 22, 2021. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we conclude the city failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

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, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Upon review, we find you have failed to establish a compelling reason to address your argument under section 552.108 of the Government Code. However, because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these sections to the responsive information.²

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. *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. *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 requestor has a right of access to information pertaining to himself that would otherwise be confidential under common-law privacy. *See* Gov't Code § 552.023 (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). Accordingly, with the exception of the requestor's date of birth, the city must withhold all audible dates of birth within the responsive recording under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from public disclosure 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. *See* Gov't Code § 552.130. We note section 552.130 is designed to protect the privacy of individuals. Thus, the requestor has a right of access to his own motor vehicle

² The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

record information and it may not be withheld from him under section 552.130. *See id.* § 552.023; ORD 481 at 4. Accordingly, with the exception of the motor vehicle record information pertaining to the requestor, the city must withhold all audible and visible license plates and driver's license information within the responsive recording under section 552.130 of the Government Code. However, none of the remaining responsive information consists of motor vehicle record information subject to section 552.130, and no portion of it may be withheld on this basis.

In summary, with the exception of the requestor's date of birth, the city must withhold all audible dates of birth within the responsive recording under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the motor vehicle record information pertaining to the requestor, the city must withhold all audible and visible license plates and driver's license information within the responsive recording under section 552.130 of the Government Code. The city must release the remaining responsive information to this requestor.³

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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/be

Ref: ID# 935382

c: Requestor

³ As noted above, the requestor has a special right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a); ORD 481 at 4. Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.