



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 24, 2022

Ms. Renee Ann Mueller
County Attorney
Washington County
100 East Main, Suite 200
Brenham, Texas 77833

OR2022-08584

Dear Ms. Mueller:

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# 938022.

Washington County (the "county") received a request for audio recordings for 9-1-1 calls during a specified period of time and the corresponding CAD reports. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the county has redacted dates of birth from the submitted documents. The county does not assert, nor does our review of our records indicate, it has been authorized to withhold any such information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2000). Because we can discern the nature of the information that has been redacted, being deprived of it does not inhibit our ability to make a ruling in this instance. Nevertheless, be advised a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering that the redacted information be released. *See* Gov't Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested"), .302.

Next, we note, and you acknowledge, the county failed to comply with section 552.301 of the Government Code in requesting a ruling from this office. *See id.* § 552.301. 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 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The county claims section 552.108 of the Government Code for the submitted information. Because sections 552.101 and 552.1175 can provide compelling reasons to overcome the presumption of openness, we will address these exceptions to the submitted information.¹ However, we find the county has failed to establish a compelling reason to address its claimed exception.

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 county must withhold the dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175, applies, in part, to “current or honorably retired peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(1); *see id.* § 552.003(1-b) (defining “honorably retired” for purposes of the Act). Accordingly, the county must withhold the information we marked and indicated under section 552.1175 of the Government Code if the individual at issue is a current or honorably retired peace officer and elects to restrict access to their marked information in accordance with section 552.1175(b) of the Government Code. Conversely, if the individual at issue is not a current or honorably retired peace officer or does not elect to restrict access to their information in accordance with section 552.1175(b), then the county may not withhold this information under section 552.1175 of the Government Code.

In summary, the county must withhold the dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The county must withhold

¹ 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).

the information we marked and indicated under section 552.1175 of the Government Code if the individual at issue is a current or honorably retired peace officer and elects to restrict access to their marked information in accordance with section 552.1175(b) of the Government Code. The county 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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/mo

Ref: ID# 938022

Enc. Submitted documents

c: Requestor
(w/o enclosures)