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ATTORNEY GENERAL OF TEXAS

May 27, 2022

Mr. Eric C. Farrar
Counsel for the City of Dickinson
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2022-15335

Dear Mr. Farrar:

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# 950526 (Ref. No. COD-P000006-021422).

The Dickinson Police Department (the "department"), which you represent, received a request for information related to a specified incident involving the requestor's client. You state the department will redact social security numbers pursuant to section 552.147(b) of the Government Code and information pursuant to Open Records Decision No. 684 (2009).¹ You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

¹ 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. *See* Gov't Code § 552.147(b). Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold certain categories of information without the necessity of requesting an attorney general decision.

² We note, and you acknowledge, the department did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

You state the department will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code.³ Section 552.130 of the Government Code excepts from disclosure 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. We note section 552.130 protects privacy interests. Thus, the requestor has a right of access to his client's motor vehicle record information. *See id.* § 552.023 (a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). You assert, and we agree, the submitted video recordings contain confidential motor vehicle record information not belonging to the requestor's client that is subject to section 552.130. 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 submitted video recordings in their entireties under section 552.130 of the Government Code.⁴ *See* Open Records Decision No. 364 (1983). Further, we note some of the remaining information is subject to section 552.130 of the Government Code. Therefore, the department must also withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

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. *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 his client's date of birth. *See Gov't Code* § 552.023(a); ORD 481 at 4. Thus, with the exception of the requestor's client's date of birth, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

³ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

⁴ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

In summary, the department must withhold the submitted video recordings in their entireties and the motor vehicle record information we marked under section 552.130 of the Government Code. With the exception of the requestor's client's date of birth, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information.⁵

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,

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/jxd

Ref: ID# 950526

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵ We note the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); *see also* ORD 481 at 4. Accordingly, if the department receives another request for this same information from a different requestor, the department must again seek a ruling from this office.