



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 7, 2022

Mr. Jeremy Anato-Mensah
Assistant City Attorney

Mr. Nico Arias
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2022-19500

Dear Mr. Anato-Mensah and Mr. Nico Arias:

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# 956949 (PIR Nos. P006017-041222 and P006161-041922).

The City of Fort Worth (the "city") received two requests from different requestors for information pertaining to a specified incident. You state the city will release a portion of the requested information. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state, and provide documentation showing, the city notified the families of the deceased individuals of the right to submit comments to this office explaining why the information at issue should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exception you claim 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." *Id.* § 552.101. Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently, and (2) an individual's interest in avoiding disclosure of personal matters. *See* Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and

child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). As noted above, the right to privacy is a personal right that lapses at death and therefore may not be asserted solely on behalf of a deceased individual. *Moore*, 589 S.W.2d at 491; ORD 272. However, the United States Supreme Court has determined that surviving family members can have a privacy interest in information relating to their deceased relatives. *See Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157 (2004).

As previously noted, the city states it has notified the surviving family members of the deceased individuals of the request for information and of their right to assert a privacy interest in the information at issue. As of the date of this letter, we have not received correspondence from any family members of the deceased individuals. Thus, we have no basis for determining the families' privacy interests in the information at issue. Therefore, the city may not withhold any of the information at issue under section 552.101 of the Government Code on the basis of constitutional privacy.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the doctrine of the common-law 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.). However, we note the first requestor has a right of access to his client's date of birth and it may not be withheld from him under section 552.101 of the Government Code in conjunction with common-law privacy. *See Gov't Code* § 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 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). Nevertheless, the city must withhold the audible and visible public citizen's date of birth in the submitted body worn camera recordings from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

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. *See Gov't Code* § 552.130. We note section 552.130 protects privacy interests. Because the right of privacy lapses at death, motor vehicle record information that pertains solely to a deceased individual may not be withheld under section 552.130. *See Moore*, 589 S.W. at; *see also* Attorney General Opinions JM-229; H-917; ORD 272. Accordingly, to the extent the requestors are the authorized representatives of individuals at issue, the requestors have a right of access to their respective clients' motor

vehicle record information pursuant to section 552.023 of the Government Code and it may not be withheld from them. *See* Gov't Code § 552.023(a); ORD 481 at 4. Accordingly, with the exception of any motor vehicle record information to which the respective requestors have a right of access pursuant to section 552.023, the city must withhold all visible license plates, visible and audible driver's license information, and visible registration stickers, under section 552.130 of the Government Code.

In summary, the city must withhold the audible and visible public citizen's date of birth in the submitted body worn camera recordings from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of any motor vehicle record information to which the respective requestors have a right of access pursuant to section 552.023, the city must withhold all visible license plates, visible and audible driver's license information, and visible registration stickers, under section 552.130 of the Government Code. The city 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/be

Ref: ID# 956949

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

2 Third Parties
(w/o enclosures)