



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

March 22, 2016

Mr. M. Matthew Ribitzki  
Deputy City Attorney  
City of Burleson  
141 West Renfro  
Burleson, Texas 76028

OR2016-06540

Dear Mr. Ribitzki:

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# 605362.

The Burleson Police Department (the "department") received a request for the police reports for two specified incidents. You state the department will redact social security numbers pursuant to section 552.147(b) of the Government Code and certain information pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim some of the submitted information is 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 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." 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. In considering

---

<sup>1</sup>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 id.* § 552.147(b). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684 (2009).

whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *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 supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.<sup>2</sup> *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at \*3. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987).

Upon review, we find the information we have marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department also must generally withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, in this instance, the requestor is the spouse of an individual whose date of birth is at issue. Thus, the requestor may be the authorized representative of his spouse, and may have a right of access to her date of birth. See Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, if the requestor is acting as the authorized representative of his spouse, then the department may not withhold his spouse's date of birth from him under section 552.101 on the basis of common-law privacy.

You state the department will withhold motor vehicle record information pursuant to section 552.130(c) of the Government Code.<sup>3</sup> Section 552.130 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(a). The department must generally withhold the motor vehicle record information at issue under section 552.130 of the Government Code. However, we note some of the information at issue pertains to the

---

<sup>2</sup>Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

<sup>3</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 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).

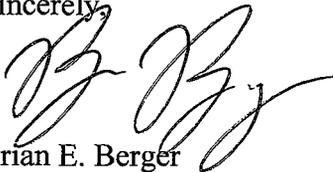
requestor's spouse. Because section 552.130 protects personal privacy, if the requestor is acting as his spouse's authorized representative, then he has a right of access to his spouse's motor vehicle record information pursuant to section 552.023. *See id.* § 552.023(a); ORD 481 at 4. In that instance, the department may not withhold the requestor's spouse's motor vehicle record information from him under section 552.130.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must generally withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is acting as the authorized representative of his spouse, then the department may not withhold his spouse's date of birth from him under section 552.101 on the basis of common-law privacy. The department must generally withhold the motor vehicle record in the submitted information under section 552.130 of the Government Code. However, if the requestor is acting as his spouse's authorized representative, then the department may not withhold his spouse's motor vehicle record information from him under section 552.130. The remaining information must be released.<sup>4</sup>

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 [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/akg

---

<sup>4</sup>In the event the requestor is acting as his spouse's authorized representative, he has a special right of access to the information being released. *See* Gov't Code § 552.023(a); ORD 481 at 4. Accordingly, if the department receives another request for this information from a different requestor, then the department must again request an opinion from this office.

Ref: ID# 605362

Enc. Submitted documents

c: Requestor  
(w/o enclosures)