



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 29, 2016

Ms. Alexis G. Allen  
Counsel for the City of Lancaster  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Ross Tower  
500 North Akard  
Dallas, Texas 75201

OR2016-22014

Dear Ms. Allen:

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# 628598 (Reference #77961).

The Lancaster Police Department (the "department"), which you represent, received a request for thirteen categories of information pertaining to a specified motor vehicle accident involving a named individual. You state you have released some information to the requestor. 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 552.130 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(a). You claim portions of the submitted documents and the entireties of the submitted video recordings must be withheld under section 552.130 of the Government Code. Upon review, we find the submitted information contains information subject to section 552.130. You state the department lacks the technological capability to redact the motor vehicle record information in the video recordings. Accordingly, the department must withhold the submitted video recordings in their entireties under section 552.130. *See* Open Records Decision No. 364 (1983). In addition, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.<sup>1</sup> However, we find the department

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

has failed to demonstrate the remaining information relates 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. Accordingly, the department may not withhold the remaining 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 of the Government Code encompasses section 730.004 of the Transportation Code, which provides that "an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record." Transp. Code § 730.004. "Personal information" includes a person's name, address, and driver identification number, but not the zip code. *Id.* § 730.003(6). The Department of Public Safety ("DPS") is an "agency" for purposes of chapter 730. *See id.* § 730.003(1) ("agency" is state agency that compiles or maintains motor vehicle records). You state some of the remaining information was obtained by the department from DPS. *See id.* § 730.007(a)(2)(A)(1) (personal information may be disclosed to government agency in carrying out its functions). An authorized recipient of personal information may not re-disclose the personal information and to do so is a misdemeanor offense. *Id.* § 730.013(a), (d). Accordingly, we find the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code. However, no portion of the remaining information consists of personal information about any person obtained by the department in connection with a motor vehicle record. Accordingly, the department may not withhold the remaining information under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code.

You assert dates of birth are excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 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 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 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> *Tex. 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

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<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).

pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at \*3. However, we find the department has failed to demonstrate the remaining information contains a public citizen's date of birth. Accordingly, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold the submitted video recordings in their entireties and the motor vehicle information we have marked under section 552.130 of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code. The department 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 [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,



Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/dls

Ref: ID# 628598

Enc. Submitted documents

c: Requestor  
(w/o enclosures)