



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 2, 2016

Ms. Cecilia Gamez  
Crime Records Bureau  
McAllen Police Department  
P.O. Box 220  
McAllen, Texas 78505-0220

OR2016-24459

Dear Ms. Gamez:

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# 632838.

The McAllen Police Department (the "department") received a request for all information related to a specified motor vehicle collision. You state you will release some information to the requestor, including the submitted CR-3 crash report pursuant to section 550.065 of the Transportation Code. *See* Transp. Code § 550.065(c) (providing for release of accident report to person or entity listed under this subsection). You claim 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 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 entirety under section 552.130.<sup>1</sup> 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.

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, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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 pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at \*3. However, because privacy is a personal right that lapses at death, the common-law right to privacy does not encompass information that relates to only a deceased individual. Accordingly, information pertaining to a deceased individual may not be withheld on common-law privacy grounds. See *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); see also Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Upon review, we find some of the remaining information satisfies the standard articulated in *Industrial Foundation*. Thus, the

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

<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).

department must withhold all living public citizens' dates of birth 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 entirety and the motor vehicle record information we have marked under section 552.130 of the Government Code. The department must withhold the all living public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

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,



Kavid Singh  
Assistant Attorney General  
Open Records Division

KVS/bhf

Ref: ID# 632838

Enc. Submitted documents

c: Requestor  
(w/o enclosures)