

DC-23-02802
CAUSE NO. _____

TORRY OSBY,

Plaintiff,

vs.

**FRANCISCO CASTILLO, and
DALLAS COUNTY, TEXAS,**

Defendants.

§ **IN THE DISTRICT COURT**
§
§
§ 191st
§ _____ **JUDICIAL COURT**
§
§
§
§
§ **DALLAS COUNTY, TEXAS**

PLAINTIFF’S ORIGINAL PETITION AND JURY DEMAND

COMES NOW, Torry Osby, Plaintiff, files this Original Petition complaining of Defendant Francisco Castillo and Defendant Dallas County, Texas, and for causes of action, would respectfully show this Court as follows:

NATURE OF THIS CASE

This lawsuit is about a Dallas County Sheriff Deputy live-streaming a traffic stop onto social media and releasing personal private identifying information about the person who had been stopped to over a hundred people viewing the live-stream of the stop. The facts of this case beg the question: how many other traffic stops of Dallas County citizens has Deputy Castillo or any other Dallas County Sheriff’s Deputy live-streamed over social media?

SUMMARY

Imagine an officer pulling over a driver on a traffic stop, and then loudly proclaiming to people walking down the sidewalk who the driver is, when he was born, where he lives, and his driver license number. This shocking invasion of privacy is essentially what occurred in this case, only to over a hundred people on the internet.

On March 2, 2021, Deputy Francisco Castillo, while employed and on duty as a Dallas County Sheriff’s Deputy, conducted a traffic stop of Torry Osby. Deputy Castillo live-streamed

Mr. Osby's private personal identifying information contained on his driver license in real time during the stop to the general public, on the social media platform TikTok, thereby violating Mr. Osby's right to privacy. Undoubtedly, there was no legitimate government interest at the time Deputy Castillo live-streamed Mr. Osby's personal identifying information to over one hundred TikTok users who were watching Deputy Castillo's live video at the time. Mr. Osby only learned that his private personal identifying information had been live-streamed over TikTok during the traffic stop because one of the people watching Deputy Castillo's video found Mr. Osby by using Mr. Osby's information that was live-streamed on TikTok and reached out to alert Mr. Osby that his information had been live-streamed to everyone watching the video.

During police encounters, people divulge information they would not share with the public, including a combination of their name, date of birth, address, and driver license number. While the act of being stopped on the side of the road by a police officer occurs in plain sight of those driving and walking nearby, the identity of the person stopped, and the nature of the stop are not broadcast to those passersby and can be embarrassing to the person stopped.

I.
DISCOVERY CONTROL PLAN LEVEL

1.1 It is the Plaintiff's intent that Discovery be conducted under Level 3 of Rule 190.4 of the Texas Rules of Civil Procedure.

II.
STATEMENT OF CLAIM OF RELIEF
PURSUANT TO TEX. R. CIV. P. 47

1.2 Plaintiff seeks monetary relief pursuant to Tex. R. Civ. P. 47(c)(1).

III.
JURISDICTION AND VENUE

2.1 Venue is proper in Dallas County pursuant to §15.002(a)(1) of the Texas Civil Practice and Remedies Code, because the incident which forms the basis of this lawsuit occurred in Dallas County, Texas.

2.2 Subject matter jurisdiction of this cause rests with this Honorable Court as the amount in controversy exceeds its minimum jurisdictional requirements.

2.4 *In personam* jurisdiction is satisfied as the Defendants resides in and/or transact business in the State of Texas, such that this Court's exercise of personal jurisdiction over Defendant is consistent with all applicable statutory requirements and constitutional.

2.5 Additionally, this is a claim brought under the Texas Tort Claims Act (TTCA), Texas Civil Practice and Remedies Code chapter 101. The Court has jurisdiction over this claim because the TTCA waives a defendant's governmental immunity for claims involving personal injury or death caused by the negligence of the defendant's employee, in this case Dallas County, in the use or condition of personal property, if that employee would be personally liable to the plaintiff under Texas law. Tex. Civ. Prac. & Rem. Code Section 101.021(2). This claim, as set out more fully in Count III, involves personal injury caused by the negligence in the use/misuse of personal property by Francisco Castillo, defendant Dallas County, Texas' employee, and that employee would be personally liable to plaintiff under Texas law.

2.6 No exception to the waiver of immunity applies to reinstate Defendant Dallas County's governmental immunity for this claim.

2.7 On August, 23, 2021, Plaintiff filed notice of his claim with Defendant Dallas County, Texas

2.8 On September 22, 2021, Defendant Dallas County, Texas acknowledged receipt of Plaintiff's claim.

IV.
PARTIES

3.1 Plaintiff Torry Osby (hereinafter "Mr. Osby" or "Plaintiff") is an individual residing in Tarrant County, Texas.

3.2 Defendant Dallas County, Texas, is a political subdivision of the State of Texas located in the Northern District of Texas. Dallas County, Texas can be served through its County Judge, Clay Jenkins, at 500 Elm Street, Suite 700, Dallas TX, 75202, or wherever he may be found.

3.3 Defendant Francisco Castillo is an individual residing in Dallas County, Texas, and at all times relevant to this lawsuit Defendant Castillo was employed as a Sheriff's Deputy with the Dallas County Sheriff's Office. Defendant Castillo may be served at his place of employment at the Dallas County Sheriff's Office, located at 133 N Riverfront Blvd #31, Dallas, TX 75207, or wherever he may be found. Defendant Castillo is being sued in his individual capacity.

V.
FACTS AND ALLEGATIONS

Defendant Castillo Used His Law Enforcement Encounters to Gain Followers on TikTok.

4.1 Defendant Castillo is a user of TikTok, a social media video hosting application.

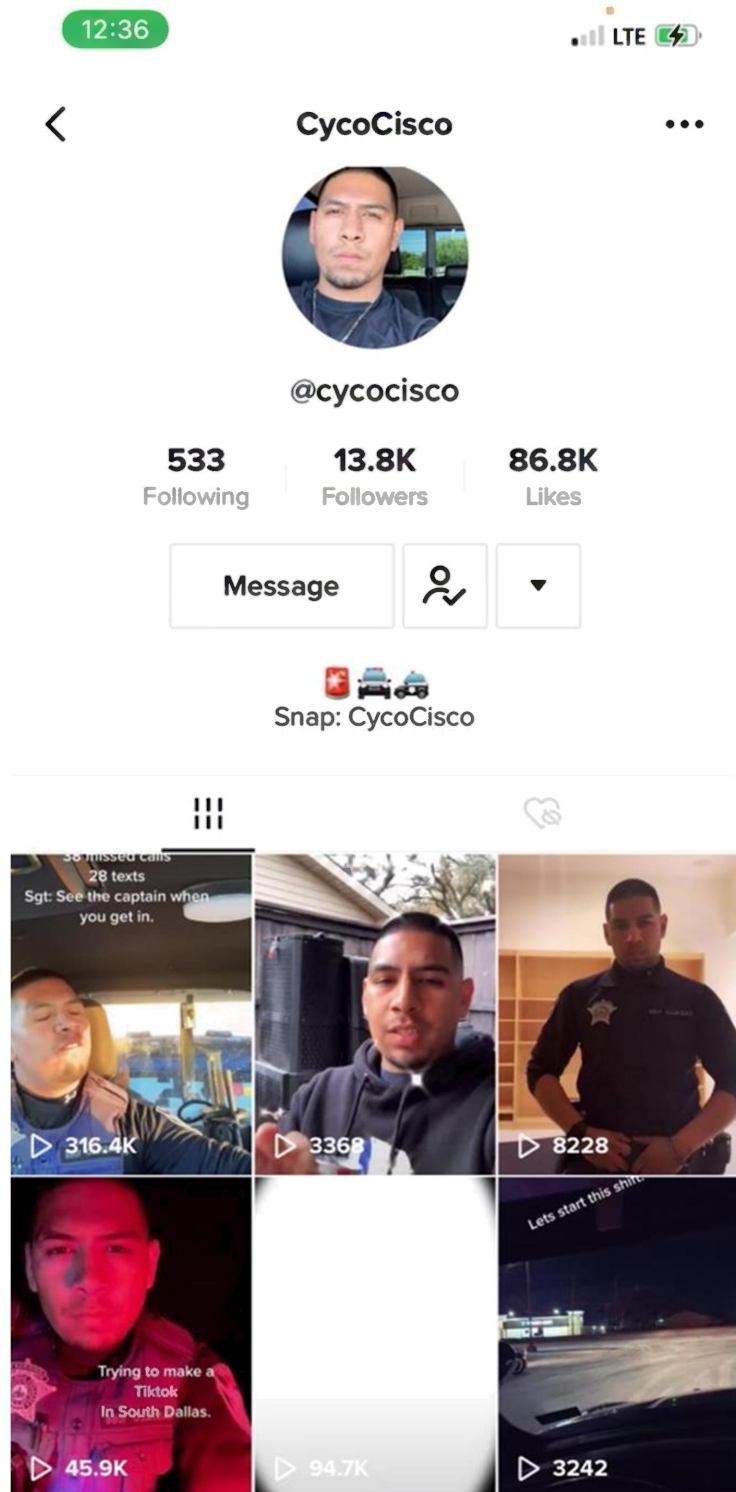
4.2 TikTok is a global video-sharing application that hosts user-submitted videos, which can range in duration from fifteen seconds to ten minutes.

4.3 TikTok has over 700 million users globally and over 100 million users in the United States alone. Fifty million of these U.S. users use the application on a daily basis.

4.4 TikTok users can live-stream videos in real time to the application where other users can watch in real time.

4.5 Defendant Castillo's username on TikTok is "CycoCisco".

4.6 Below is a screenshot of Defendant Castillo's TikTok profile taken in August of 2021.



4.7 Defendant Castillo has three images below his profile picture indicating he is a police officer; to wit, a siren, the front view of a police car, and the side view of a police car.

4.8 This demonstrates that Defendant Castillo is marketing his TikTok account as a law enforcement officer's account.

4.9 At the time this screenshot was taken, Defendant Castillo had over thirteen thousand followers of the account CycoCisco, meaning over thirteen thousand users follow the CycoCisco account and are alerted when CycoCisco live-streams videos.

4.10 At the time this screenshot was taken, Defendant Castillo had over eighty-six thousand "likes" on the account CycoCisco, meaning that over eighty-six thousand users have "liked" videos live-streamed and posted on the account CycoCisco.

4.11 Defendant Castillo was live-streaming traffic stops that he was conducting as a Dallas County Sheriff's Deputy to gain followers, views, and "likes" on his TikTok account CycoCisco.

4.12 The screenshot from August 2021 above shows six videos on Defendant Castillo's TikTok account CycoCisco.

4.13 Four of these videos depict Defendant Castillo in his Dallas County Sheriff's Office uniform and/or engaged in law enforcement activities while working for the Dallas County Sheriff's Office.

4.14 The video in the top left of the block of six videos in that screenshot shows Defendant Castillo in his Dallas County uniform and inside of his Dallas County Patrol car with caption "38 missed calls 28 texts Sgt: See the captain when you get in." This video had over 316,400 views at the time the screenshot was taken.

4.15 The video in the top right of the block of six videos in that screenshot shows Defendant Castillo in his Dallas County Sheriff’s Office uniform. This video had 8,228 views at the time the screenshot was taken.

4.16 The video in the bottom right of the block of six videos in that screenshot shows a viewpoint from Defendant Castillo looking through the windshield of his Dallas County patrol car with the caption “Lets start this shift”. This video had 3,242 views at the time the screenshot was taken.

4.17 The video in the bottom left of the block of six videos in that screenshot shows Defendant Castillo in his Dallas County Sheriff’s Office uniform with the caption “Trying to make a Tiktok in South Dallas.” This video had over 45,900 views at the time the screenshot was taken.

4.18 Defendant Castillo saw that he got more views when he was engaged in law enforcement activity while on duty for Dallas County Sheriff’s Office and while being depicted as a law enforcement officer with the Dallas County Sheriff’s Office.

4.19 These police videos were in fact gaining Defendant Castillo followers, views, and “likes” on his TikTok account CycoCisco as is demonstrated by the increase in followers and likes on his account.

4.20 Below is a screenshot of Defendant Castillo’s TikTok profile taken on February 9, 2023.



4.21 At the time this screenshot was taken, Defendant Castillo had over seventeen thousand followers of the account CycoCisco, meaning over seventeen thousand users follow the CycoCisco account and are alerted when CycoCisco live-streams videos – an increase from August of 2021.

4.22 At the time this screenshot was taken, Defendant Castillo had over ninety-five thousand “likes” on the account CycoCisco, meaning that over ninety-five thousand users have “liked” videos live-streamed and posted on the account CycoCisco – an increase from August of 2021.

Defendant Castillo Violated Mr. Osby’s Right to Privacy

4.23 On March 2, 2021, Defendant Castillo conducted a traffic stop on Torry Osby.

4.24 Mr. Osby was driving to work at his job at a Walmart Distribution Center.

4.25 Defendant Castillo, under username CycoCisco live-streamed Mr. Osby’s traffic stop on TikTok so that everyone watching Defendant Castillo’s video could watch the traffic stop in real time as he live-streamed it on the application.

4.26 When Defendant Castillo began live-streaming Mr. Osby’s traffic stop, each of the followers of CycoCisco were alerted that the live-stream had started so that they could view it.

4.27 Defendant Castillo was live-streaming Mr. Osby’s traffic stop to gain views, followers, and “likes” on his TikTok account CycoCisco – and not for a legitimate government purpose.

4.28 At no point did Defendant Castillo inform Mr. Osby that he was being live streamed on TikTok.

4.29 At no point did Mr. Osby consent to being live-streamed on TikTok.

4.30 Defendant Castillo accused Mr. Osby of speeding even though Mr. Osby was not speeding as he had his cruise control on and was driving under the speed limit.

4.31 Defendant Castillo approached Mr. Osby's vehicle and asked Mr. Osby for his driver license.

4.32 Mr. Osby provided Defendant Castillo with his driver license as requested.

4.33 Defendant Castillo walked back to his patrol vehicle.

4.34 Defendant Castillo told Mr. Osby he would give him a verbal warning for speeding instead of a citation.

4.35 Defendant Castillo did not give Mr. Osby a citation for speeding because Mr. Osby had not been speeding, as his car was set to cruise control under the speed limit.

4.36 When Defendant Castillo pulled Mr. Osby over, Defendant Castillo knew that Mr. Osby was not speeding.

4.37 Defendant Castillo only pulled Mr. Osby over so that he could live-stream the stop in an attempt to gain more "likes" and followers for his TikTok account CycoCisco.

4.38 The traffic encounter ended with Mr. Osby receiving a verbal warning and no citation.

4.39 At no point did Defendant Castillo inform Mr. Osby that the traffic encounter was being live streamed onto TikTok.

4.40 Mr. Osby had no idea – and no reason to believe – that the law enforcement encounter with Defendant Castillo had been live-streamed or broadcast to the public.

4.41 Approximately twenty minutes later, Mr. Osby received a message from a stranger on Facebook messenger named "Stanley Sensational" saying that he had watched a live stream of

the traffic stop and he and other views had seen the personal identifying information contained on Mr. Osby's driver license.

4.42 Below is a screen capture of the discussion between Mr. Osby and "Stanley Sensational" where "Stanley Sensational" provided Mr. Osby with Defendant Castillo's username "cycocisco".

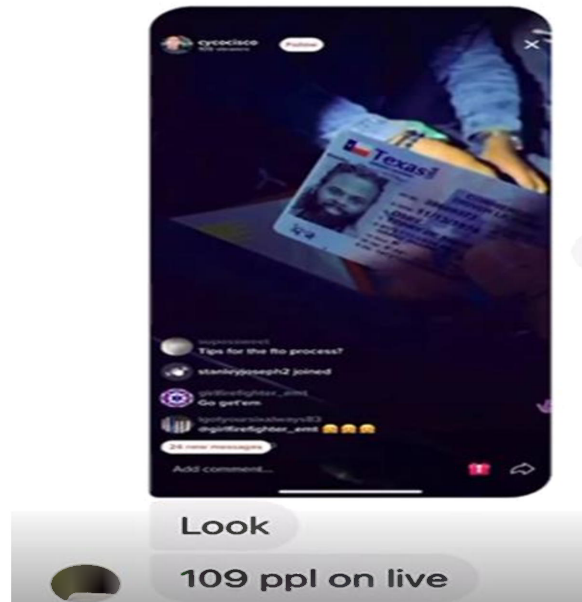


4.43 Additionally, Stanley Sensational informed Mr. Osby that Defendant Castillo did not intend to give Mr. Osby a ticket and “just wanted to show his viewers what he do”.

4.44 This demonstrates that Defendant Castillo knew that Mr. Osby was not actually speeding but just wanted to pull Mr. Osby over so that he could create a live-stream video engaging in law enforcement activity to gain views, followers, and “likes” for his TikTok account.

4.45 “Stanley Sensational” informed Mr. Osby that his personal identifying information contained on his drivers’ license had been shared with viewers watching the livestream.

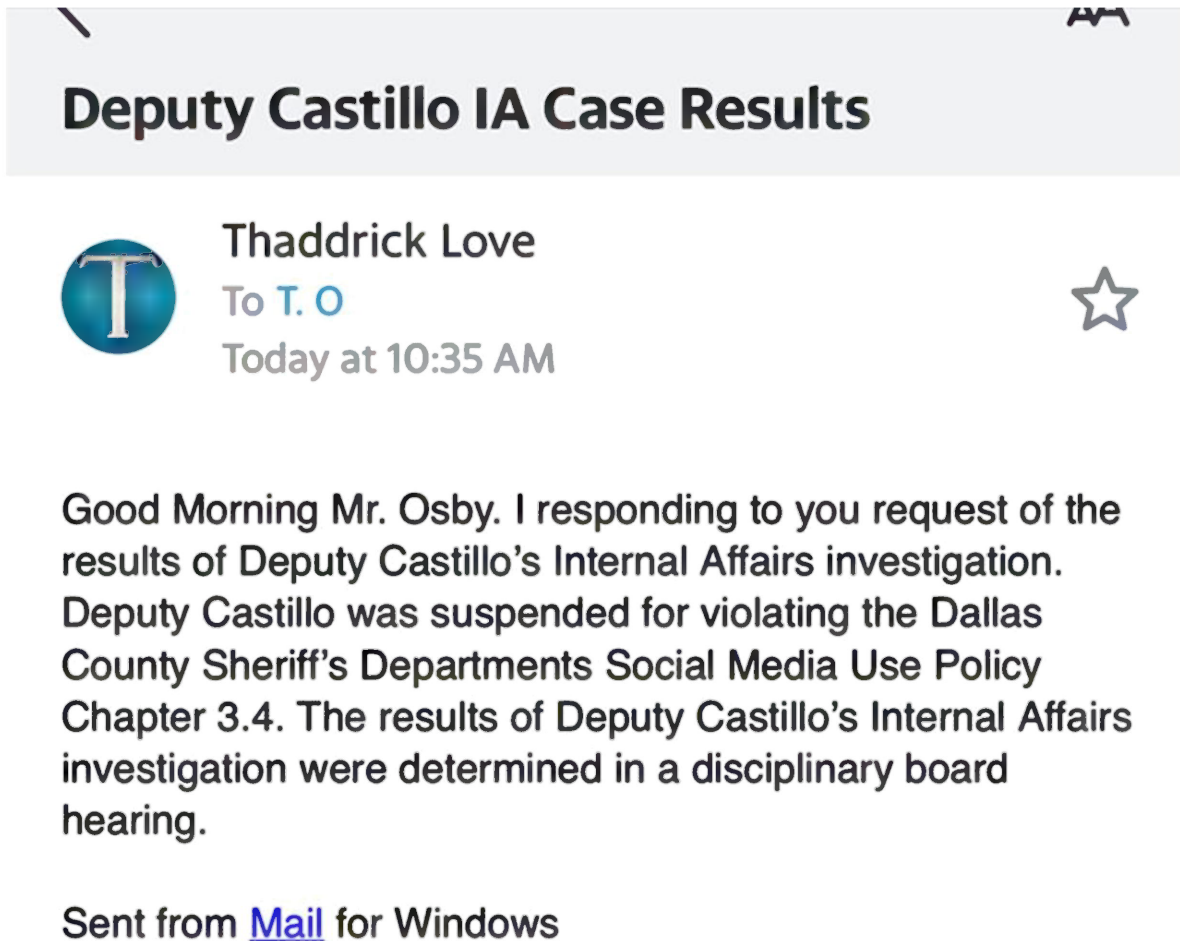
4.46 Mr. Osby’s personal identifying information, which was shared by Defendant Castillo during the livestream of the traffic stop included his height, age, date of birth, driver license number, name, address, photo identification, gender, and eye color. Below is a screen capture of Defendant Castillo displaying Mr. Osby’s drivers’ license during the livestream.



4.47 Stanley Sensational showed Mr. Osby a screen capture of one hundred and nine viewers of the livestream of Mr. Osby’s traffic stop.

4.48 Appalled at Defendant Castillo’s shocking behavior, Mr. Osby filed a complaint against Defendant Castillo with the Dallas County Sheriff’s Office and an Internal Affairs investigation ensued.

4.49 Below is a screenshot of the email Sergeant Thaddrick Love of the Dallas County Sheriff’s Office sent Mr. Osby regarding the Internal Affairs investigation stemming from Mr. Osby’s complaint.



4.50 According to Sergeant Love, Defendant Castillo was suspended for violating Dallas County Sheriff’s Office policy.

4.51 Mr. Osby continues to suffer from mental and emotional anguish as a result of Defendant Castillo's unlawful conduct and underwent therapy following the flagrant invasion of his privacy.

4.52 Mr. Osby bought cameras to put around his home and feared that other people would attempt to locate him like "Stanley Sensational" did, but with nefarious motives.

4.53 These injuries were not caused by any other means.

4.54 At the time Defendant Castillo live-streamed the traffic encounter with Mr. Osby, Defendant Castillo was performing duties in his capacity as a Dallas County Sheriff's Deputy by conducting a traffic stop on Mr. Osby.

VI. CAUSES OF ACTION

COUNT I

Right to Informational Privacy Violation of the Fourteenth Amendment Pursuant to 42 U.S.C. § 1983 Against Defendant Castillo

5.1 Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 4.1-4.53 as if fully repeated herein.

5.2 Acting under the color of law, Defendant Castillo deprived Mr. Osby of the rights and privileges secured to him by the right to informational privacy under the Fourteenth Amendment to the United States Constitution.

5.3 Plaintiff brings this cause of action pursuant to 42 U.S.C. § 1983.

5.4 In *Whalen v. Roe*, 429 U.S. 589, 599, 97 S.Ct. 869, 51 L.Ed.2d 64 (1977), the Supreme Court recognized that the Fourteenth Amendment right to substantive due process protects an "individual interest in avoiding disclosure of personal matters." 429 U.S. 589, 599, 97 S.Ct. 869, 51 L.Ed.2d 64 (1977) ("The prohibition against government dissemination of private

information ... is found in the ‘Fourteenth Amendment's concept of personal liberty.’ ”); see also *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 457, 97 S.Ct. 2777, 53 L.Ed.2d 867 (1977) (“One element of privacy has been characterized as ‘the individual interest in avoiding disclosure of personal matters....’ ”).

5.5 The Fifth Circuit has defined this confidentiality interest as “‘the right to be free from the government disclosing private facts about its citizens.’” *Wyatt v. Fletcher*, 718 F.3d 496, 505 (5th Cir.2013) (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490, 492 (5th Cir.1985); see also *Fadjo v. Coon*, 633 F.2d 1172, 1175 (5th Cir.1981)).

5.6 According to the Court the constitution protects individuals against invasion of their privacy by the government. The liberty interest in privacy encompasses two notions: The freedom from being required to disclose personal matters to the government and the freedom to make certain kinds of decisions without government interference. The disclosure strand of the privacy interest in turn includes the right to be free from the government disclosing private facts about its citizens and from the government inquiring into matters in which it does not have a legitimate and proper concern. *Ramie*, 765 F. 2d at 492.

5.7 Here, Mr. Osby has a legitimate expectation of privacy in information contained on his driver license, including but not limited to his height, age, date of birth, driver license number, name, address, photo identification, gender, and eye color.

5.8 These personal identifiers are unique to Mr. Osby.

5.9 There is a reasonable expectation of privacy in one’s own date of birth generally. *Scottsdale Unified School Dist. No. 48 v. KPNX Broad. Co.*, 191 Ariz. 297, 955 P.2d 534, 538–39 (1998); La. Att'y Gen. Op. 09–0298 (April 5, 2010).

5.10 In *Scottsdale*, the Arizona Supreme Court recognized a privacy interest in teachers' birth dates stating, "[b]irth dates are information usually restricted to a class of persons, typically family members and friends. The only instance in which one divulges this information occurs in the business or workplace context where the information is a prerequisite for certain benefits, such as employee retirement and benefits calculations, the purchase of health or automobile insurance, credit applications, etc." 955 P.2d 534, 538-39 (Ariz. 1998).

5.11 The Fifth Circuit has previously recognized that an individual's informational privacy interest in personal identifying information such as his or her social security number is substantial, as "simultaneous disclosure of an individual's name and confidential [social security number] exposes that individual to a heightened risk of identity theft and other forms of fraud." *Sherman v. United States Department of Army*, 244 F.3d 357, 365-66 (5th Cir. 2001).

5.12 Other courts have found that individuals have substantial privacy interests in their personal information, such as their names and telephone numbers. *Highland Cap. Mgmt., LP v. Internal Revenue Serv.*, 408 F. Supp. 3d 789, 817 (N.D. Tex. 2019) (citing *Roseberry-Andrews v. Department of Homeland Security*, 299 F. Supp. 3d 9, 30 (D.D.C. 2018)).

5.13 According to the Court in *Texas Comptroller of Public Accounts*, "nor is it relevant that birth dates may be readily available from other sources. "An individual's interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form." *Texas Comptroller of Public Accounts v. Attorney General*, 354 S.W.3d 336, 356 (Tex. 2010) (citing *U.S. Dep't of Defense v. Fed. Labor Relations Auth.*, 510 U.S. 487, 500, 114 S.Ct. 1006, 127 L.Ed.2d 325 (1994)).

5.14 Further, “the Supreme Court has held that government employees have a privacy interest in nondisclosure of their home addresses, even though “home addresses often are publicly available through sources such as telephone directories and voter registration lists.” *Id.* (holding that such addresses were exempt from disclosure under Freedom of Information Act Exemption 6)).

5.15 “Identity theft, without question, is becoming one of the fastest growing criminal and consumer offenses in the twenty-first century. *Id.* at 343 ((citing *Daly v. Metropolitan Life Ins. Co.*, 4 Misc.3d 887, 782 N.Y.S.2d 530, 535 (N.Y.Sup.2004) (denying defendant’s motion for summary judgment in negligence action against insurer who disclosed consumers’ names, social security numbers, and date of birth information))).”

5.16 The Federal Trade Commission estimated 27.3 million reported cases of identity theft, causing billions of dollars in damages, in the five years preceding early 2003.” *Id.* (citing *Thomas Fedorek, Computers + Connectivity = New Opportunities for Criminals and Dilemmas for Investigators*, 76-Feb. N.Y. St. B.J. 10, 15 (February, 2004)).

5.17 A date of birth obtained in combination with other data about an individual can be used in at least two harmful ways: to obtain sensitive information about an individual and to commit identity theft. *Id.*; citing *Daly v. Metropolitan Life Ins. Co.*, 782 N.Y.S.2d at 535–36; *Scottsdale Unified Sch. Dist. v. KPNX Broad. Co.*, 191 Ariz. 297, 955 P.2d 534, 539 (1998). Tex. Att’y Gen. OR2006–01938, at 3.

5.18 Moreover, “there is little question that one can take personal information that’s not sensitive, like birth date, and combine it with other publicly available data to come up with something very sensitive and confidential.” *Id.* at 344.

5.19 “As the Arizona Supreme Court has observed: With both a name and birth date, one can obtain information about an individual’s criminal record, arrest record ... driving record, state of origin, political party affiliation, social security number, current and past addresses, civil litigation record, liens, property owned, credit history, financial accounts, and, quite possibly, information concerning an individual’s complete medical and military histories, and insurance and investment portfolio.” *Scottsdale Unified Sch. Dist. No. 48 v. KPNX Broad. Co.*, 191 Ariz. 297, 955 P.2d 534, 539 (1998); see also *Data Tree, LLC v. Meek*, 279 Kan. 445, 109 P.3d 1226, 1238 (2005) (“An individual's social security number, date of birth, and mother’s maiden name are often used as identifiers for financial accounts or for obtaining access to electronic commerce.”); *Hearst Corp. v. State*, 24 Misc.3d 611, 882 N.Y.S.2d 862, 875 (N.Y.Sup.Ct.2009) (concluding that “a reasonable person would find the disclosure of their precise birth dates, taken together with their full name and other details of their State employment, to be offensive and objectionable”). In fact, “[a] key element from the privacy standpoint is the inclusion of residents’ date of birth.” Ira Bloom, *Freedom of Information Laws in the Digital Age: The Death Knell of Informational Privacy*, 12 RICH. J.L. & TECH. 9, at * 19 (2006).

5.20 These concerns have led courts to conclude that birth dates implicate substantial privacy interests. See, e.g., *Oliva v. United States*, 756 F.Supp. 105, 107 (E.D.N.Y.1991) (holding that, under FOIA Exemption 6, “dates of birth[] are a private matter, particularly when coupled with ... other information” and disclosure “would constitute a clearly unwarranted invasion of personal privacy”); cf. *Schiller v. INS*, 205 F.Supp.2d 648, 663 (W.D.Tex.2002) (holding that, under FOIA Exemption 7(c) “the privacy interest of these individuals in their names and identifying information, i.e. birth date, outweighs the public interest in disclosure”); *Creel v. U.S. Dep't of State*, 1993 U.S. Dist. LEXIS 21187, at *19–*20 (E.D.Tex.1997) (noting that, under FOIA

Exemption 7(c), private citizen had a “significant personal privacy interest in her home address, birth date, social security number, and telephone number”).

5.21 The private nature of the birth dates gives rise to a presumption that they are not of legitimate public concern. *Indus. Found.*, 540 S.W.2d 668 at 685.

5.22 Here, the privacy concern at issue is the simultaneous disclosure of Mr. Osby’s height, age, date of birth, driver license number, name, address, photo identification, gender, and eye color.

5.23 The ease of identifying Mr. Osby due to Defendant Osby’s shocking disclosure of Mr. Osby’s personal identifying information is exhibited through the ability of a complete stranger “Stanley Sensational” to locate and message Mr. Osby on the social media platform Facebook only twenty minutes after Defendant Castillo disclosed Mr. Osby’s personal private identifying information.

Privacy Interest Outweighs Need for Public Disclosure

5.24 Without question there is no legitimate government interest in live-streaming Mr. Osby’s personal identifying information contained on his driver license, as it was not pursuant to any law enforcement or criminal investigative purpose.

5.25 No reasonable officer would believe that live-streaming a police/citizen encounter on TikTok would be appropriate or necessary for the pursuit of justice, protection of life, or performance of their law enforcement duties.

Damages

5.26 Mr. Osby continues to suffer from mental and emotional anguish as a result of Defendant Castillo’s unlawful conduct and underwent therapy following the flagrant invasion of his privacy.

