



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 31, 2012

Mr. Warren Ernst
Chief of the General Counsel Division
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

OR2012-17410

Dear Mr. Ernst:

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# 469792.

The City of Dallas (the "city") received a request for all judicial evaluations submitted by city prosecutors as part of the judge selection process for a specified time period. You state some of the information is being released. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, you inform us this office has previously ruled on the submitted information in Open Records Letter No.2012-12792 (2012). In that ruling, this office concluded that (1) if the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the personal information we marked under section 552.117(a)(1) of the Government Code; (2) the city must withhold

¹We assume the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

the information we have marked under section 552.130 of the Government Code; (3) the city must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to disclosure; and (4) the city must release the remaining information pursuant to section 552.022(a)(1) of the Government Code. As we have no indication that the law, facts, and circumstances on which this prior ruling was based have changed, the city must continue to rely on this prior ruling as a previous determination and withhold or release the information that was previously ruled upon in accordance with that decision. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note, and you acknowledge, that the city failed to comply with the statutory time period prescribed by section 552.301 of the Government Code. *See* § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). In this instance, section 552.101 can provide a compelling reason to overcome this presumption. Therefore, we will address your arguments under this exception.

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. This exception encompasses information other statutes make confidential. You also argue the marked dates of birth are excepted from disclosure under section 552.101 in conjunction with section 521.051 of the Business and Commerce Code.² Section 521.051(a) provides that

[a] person may not obtain, possess, transfer, or use personal identifying information of another person without the other person's consent, and with intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the other person's name.

²Although you also cite to section 521.002 of the Texas Business and Commerce Code, that section defines terms for purposes of chapter 521 of the Business and Commerce Code and does not make information confidential.

Bus. & Comm. Code § 521.051(a) (formerly Bus. & Comm. Code § 48.101(a)). “Personal identifying information” is defined as “information that alone or in conjunction with other information identifies an individual” and includes an individual’s date of birth. *Id.* § 521.002(a)(1)(A). You assert the marked dates of birth meet the definition of “personal identifying information” under section 521.002(a)(1) of the Business and Commerce Code. *See id.* § 521.002(a)(1). We note section 521.051(a) of the Business and Commerce Code does not prohibit the transfer of personal identifying information of another person unless the transfer is made with the intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the other person’s name without that person’s consent. *See id.* § 521.051(a). In this instance, the city’s release of the information at issue would be for the purpose of complying with the Act and not “with intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value[.]” *See id.* Therefore, section 521.051(a) does not prohibit the city from transferring the information at issue. *See id.* We therefore conclude the city may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 521.051 of the Business and Commerce Code.

You also claim section 552.101 of the Government Code in conjunction with common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. You seek to withhold the dates of birth of members of the public on this basis. We note the dates of birth of living members of the public are not protected by common-law privacy under section 552.101. *See Open Records Decision No. 455 at 7 (1987) (home addresses, telephone numbers, and dates of birth not private).* We therefore conclude the city may not withhold any of the dates of birth at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

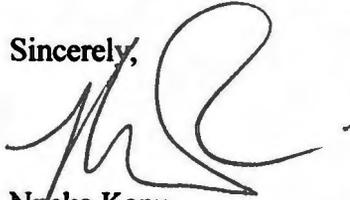
In summary, the city must continue to rely on Open Records Letter No. 2012-12792 as a previous determination and withhold or release the information that was previously ruled upon in accordance with that decision. The remaining information must be released.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nneka Kanu', written over the word 'Sincerely,'.

Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 469792

Enc. Submitted documents

c: Requestor
(w/o enclosures)

MR

APR 21 2016

At 9:07 A.M.
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-12-002630

CITY OF DALLAS,

Plaintiff,

v.

GREG ABBOTT, ATTORNEY
GENERAL OF TEXAS,

Defendant.

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IN THE DISTRICT COURT OF

OF TRAVIS COUNTY, TEXAS

345TH JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552, in which the City of Dallas (the City), sought to withhold certain information from public disclosure. All matters in controversy between Plaintiff, the City, and Defendant, Ken Paxton¹, Attorney General of Texas (Attorney General), arising out of this lawsuit have been resolved by settlement, a copy of which is attached hereto as Exhibit "A", and the parties agree to the entry and filing of an Agreed Final Judgment.

Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period of time to intervene after notice is attempted by the Attorney General. The Attorney General represents to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the Attorney General sent a certified letter to the requestor, Mr. Steve Thompson, on March 5, 2016, informing him of the setting of this matter on the uncontested docket. The requestor was informed of the parties' agreement that the City of Dallas must withhold the dates of birth from the information at issue. The requestor was also informed of his right to intervene in the suit to contest the withholding of this information. A copy of the certified mail receipt is attached to this motion. The requestor has not filed a motion to intervene.

¹ Because Greg Abbott was sued solely in his official capacity, Ken Paxton is now the proper defendant in this lawsuit.

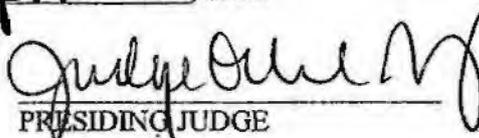


After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. The City and the Attorney General have agreed that in accordance with the PIA and under the facts presented, the dates of birth are confidential pursuant to the court of appeals' decision in *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061 (Tex. App.-Austin May 22, 2015, pet. denied) (mem. op.). The City agrees to release the information with the dates of birth redacted, in addition to the redactions allowed by letter ruling OR2012-12792.
2. All court cost and attorney fees are taxed against the parties incurring the same;
3. All relief not expressly granted is denied; and
4. This Agreed Final Judgment finally disposes of all claims that are the subject of this lawsuit between the City of Dallas and the Attorney General and is a final judgment.

SIGNED the 21st day of April, 2016.

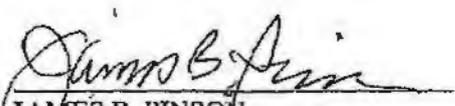

PRESIDING JUDGE

AGREED:



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Attorney for the City of Dallas

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its rights under the PIA, also asserting that dates of birth of members of the public must be redacted under Texas Government Code 552.101 in conjunction with common-law privacy.

Since that time, the City has agreed to release the judicial evaluations with the dates of birth redacted.

In *Paxton v. City of Dallas*, the Third Court of Appeals determined that dates of birth of members of the public are confidential under Texas Government Code section 552.101 in conjunction with common-law privacy. No. 03-13-00546-CV, 2015 WL 3394061 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.).

Texas Government Code section 552.325(c) allows the Attorney General to enter into settlement under which information at issue in a lawsuit may be withheld. The parties wish to resolve this matter without further litigation.

Terms

For good and sufficient consideration, the receipt of which is acknowledged, the parties to this Agreement agree and stipulate that:

1. The City and the Attorney General have agreed that in accordance with the PIA and under the facts presented, the dates of birth are confidential pursuant to the court of appeals' decision in *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The City agrees to release the information with the dates of birth redacted, in addition to the redactions allowed by letter ruling OR2012-12792.

2. The City and the Attorney General agree to the entry of an agreed final judgment, the form of which has been approved by each party's attorney. The agreed final judgment will be presented to the court for approval, on the uncontested docket, with at least 15 days prior notice to the requestor.

3. The Attorney General agrees that he will also notify the requestor, as required by TEX. GOV'T CODE § 552.325(c), of the proposed settlement and of his right to intervene to contest the City's right to withhold the information.

4. A final judgment entered in this lawsuit after a requestor intervenes prevails over this Agreement to the extent of any conflict.

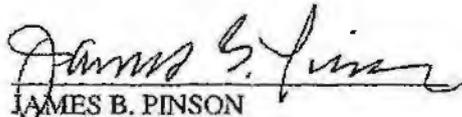
5. Each party to this Agreement will bear their own costs, including attorney fees relating to this litigation.

6. The terms of this Agreement are contractual and not mere recitals, and the agreements contained herein and the mutual consideration transferred is to compromise disputed claims fully, and nothing in this Agreement shall be construed as an admission of fault or liability, all fault and liability being expressly denied by all parties to this Agreement.

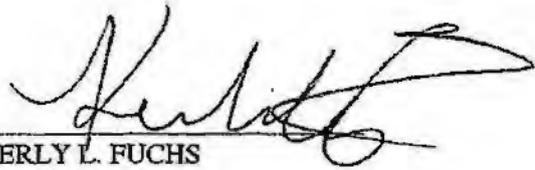
7. The City warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the City has against the Attorney General arising out of the matters described in this Agreement.

8. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the Attorney General has against the City arising out of the matters described in this Agreement.

9. This Agreement shall become effective, and be deemed to have been executed, on the date on which the last of the undersigned parties sign this Agreement.



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April 2, 2016 , 4:53 am	Departed USPS Facility	DALLAS, TX 75260
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March 31, 2016 , 10:58 pm	Arrived at USPS Facility	AUSTIN, TX 78710

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