



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

August 14, 2013

Mr. Warren M. S. 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.

OR2013-14173

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# 496311.

The City of Dallas (the "city") received a request for (1) a list of boarding home facilities in Dallas that have paid for required boarding home facility licenses and those that are not in compliance, have not met city or state uniform standards, or have been found to have violations as defined by city ordinance; and (2) all boarding home facility inspection reports in Dallas since July 2012.¹ You state the city will release some information to the requestor with redactions pursuant to the previous determination issued in Open Records Decision No. 684 (2009).² You claim the remaining requested information is excepted from disclosure

¹You note that the city sought and received clarification of the information requested. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.³

Initially, you assert the city, in *City of Dallas v. Gregg Abbott, Attorney Gen. of Tex.*, Cause No. D-1-GV-12-000861 in the 53rd District Court of Travis County, Texas, argued and was granted summary judgment that the dates of birth for non-public individuals are excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. However, upon review, we find the court's decision is limited to the facts and information at issue in the underlying letter ruling, and does not apply to the information currently at issue. Accordingly, the city may not withhold dates of birth in the information at issue based on the court's decision in that case.

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 the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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 established. *Id.* at 681-82. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Furthermore, this office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990) (mortgage payments, assets, bills, and credit history). However, we note dates of birth of members of the public are generally not highly intimate or embarrassing. *See* ORD 455 at 7 (home addresses, telephone numbers, dates of birth not protected under privacy).

Additionally, this office has concluded the names and present addresses of current or former residents of a public housing development are not protected from disclosure under the common-law right to privacy. *See* Open Records Decision No. 318 (1982). Likewise, the amounts paid by a housing authority on behalf of eligible tenants are not protected from disclosure under privacy interests. *See* Open Records Decision

³We assume that the "representative sample" of records 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 that those records contain substantially different types of information than that submitted to this office.

No. 268 (1981); *see also* Open Records Decision Nos. 600 at 9-10 , 545, 489 (1987), 480 (1987).

You claim the information at issue is protected by common-law privacy. Upon review, we find the information we have marked is highly intimate or embarrassing and is of no legitimate public interest. Therefore, the city must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate how any of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

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.⁴ *See* Gov't Code § 552.130. Accordingly, the city must withhold the driver's license number we have marked under section 552.130 of the Government Code.⁵

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the driver's license number we have marked under section 552.130 of the Government Code. 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.

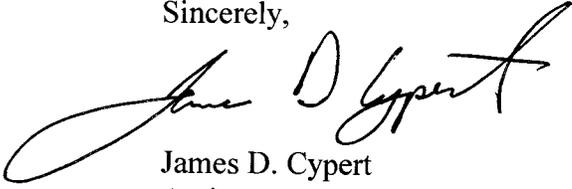
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

⁴The Office of the Attorney General will raise a mandatory exception, such as section 552.130, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁵We note 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* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to 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* Gov't Code § 552.130(d), (e).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "James D. Cypert". The signature is fluid and cursive, with a large loop at the end.

James D. Cypert
Assistant Attorney General
Open Records Division

JDC/tch

Ref: ID# 496311

Enc. Submitted documents

c: Requestor
(w/o enclosures)

OCT 21 2015

At 3:00 P M.
Velva L. Price, District Clerk

Cause No. D-1-GV-12-001471

CITY OF DALLAS,
Plaintiff,

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§
§

IN THE DISTRICT COURT OF

v.

GREG ABBOTT,
ATTORNEY GENERAL OF TEXAS,
Defendant.

TRAVIS COUNTY, TEXAS

53rd JUDICIAL DISTRICT

FINAL JUDGMENT

On October 20, 2015, the above-styled and numbered cause came on for trial. Plaintiff, the City of Dallas, and Defendant, Ken Paxton, Attorney General of Texas, appeared by counsel of record and announced ready. 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. The parties submitted all matters in controversy, legal and factual, to the Court. The Court renders judgment for the City of Dallas.

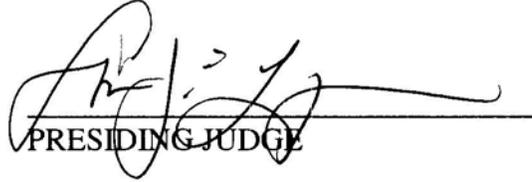
In accordance with *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061 (Tex. App.—Austin May 22, 2015, pet. denied), it is ADJUDGED, ORDERED, and DECREED that the dates of birth of members of the public that are subject to the following attorney general rulings are excepted from disclosure under PIA section 552.101 as information coming within the common-law right of privacy: OR2012-15687, OR2013-13460, OR2013-14173, OR2013-15029, OR2014-02027, OR2014-03053, OR2014-10958, OR2014-12007, OR2014-13280, OR2015-00856, OR2015-03225, OR2015-04746, OR2015-06486, OR2015-09796, OR2015-09650, OR2015-12740, OR2015-12882, OR2015-11167, OR2015-12505, OR2015-14442, OR2015-12568, OR2015-15076, OR2015-14991, OR2015-15428, OR2015-15574, OR2015-16409, OR2015-16823, OR2015-17001, OR2015-16711, OR2015-17686, OR2015-17639, and OR2015-18652.



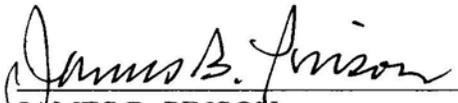
All relief not expressly granted is denied.

This judgment disposes of all claims between all parties and is a final judgment.

SIGNED on the 20th day of OCTOBER, 2015.


PRESIDING JUDGE

APPROVED AS TO FORM:


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THE CITY OF DALLAS


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