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

December 17, 2013

Mr. Jeffrey W. Giles
Assistant City Attorney
Legal Department
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

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

OR2013-21899

Dear Mr. Giles:

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# 508670 (GC No. 20865).

The City of Houston (the "city") received a request for the licenses and original applications of all entertainers employed in the three months preceding the request at a specified establishment. You inform us you will redact driver's license information pursuant to section 552.130(c) of the Government Code and a social security number pursuant to section 552.147(b) of the Government Code.[1] You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

[1]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* 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 id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *Id.* § 552.147(b).

Gov't Code § 552.101. You state the submitted information is subject to the decision in *N.W. Enterprises, Inc. v. City of Houston*, 352 F.3d 162 (5th Cir. 2003). The question in *N.W. Enterprises* was the constitutionality of an ordinance of the city that regulated sexually-oriented businesses and specified the personal information required of individuals applying for permits to work as managers or entertainers in such businesses. With regard to the required public disclosure under the Act of certain information provided by entertainers and managers in their permit applications, the district court in *N.W. Enterprises* concluded that:

> "there is meaningful potential danger to individuals working in sexually oriented businesses if the information in their permit applications is disclosed to the public. The Court concludes further that the potential for disclosure is likely to have a chilling effect on the applicants' protected speech. These dangerous and chilling effects are sufficiently severe that the information should be held confidential by the [c]ity."

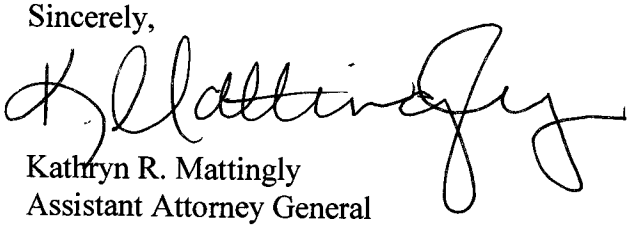
N.W. Enters., Inc. v. City of Houston, 27 F.Supp.2d 754, 843 (S.D. Tex.1998). In upholding the confidentiality determination of the district court, the United States Court of Appeals for the Fifth Circuit stated that "[b]ecause the district court declared the information on entertainer and manager permit applications confidential under the [Act], the [c]ity cannot disclose it to the public." *N.W. Enters.*, 352 F.3d at 195. The appellate court also agreed the entertainers' and managers' home addresses and telephone numbers were confidential. *Id.* Thus, pursuant to *N.W. Enterprises*, information revealing the identity of an entertainer or manager of a sexually-oriented business, including the entertainer's or manager's home address and telephone number, is generally confidential. Portions of the submitted information reveal the types of information protected in *N.W. Enterprises*. Therefore, the identifying information we have marked must be withheld under section 552.101 of the Government Code in conjunction with the court's holding in *N.W. Enterprises*. However, *N.W. Enterprises* did not address the confidentiality of the remaining information. Therefore, the remaining information is not confidential under the decision in *N.W. Enterprises* and may not be withheld on that basis under section 552.101 of the Government Code. As you raise no further exceptions to disclosure, 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

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

Sincerely,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 508670

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Filed in The District Court
of Travis County, Texas

NOV 04 2015
At 2:11 pm NS
Velva L. Price,

Cause No. D-1-GV-13-001205

THE CITY OF HOUSTON, TEXAS *Plaintiff,*	§ § §	IN THE DISTRICT COURT OF
v.	§ §	353rd JUDICIAL DISTRICT
GREG ABBOTT, ATTORNEY GENERAL OF TEXAS, *Defendant.*	§ § §	TRAVIS COUNTY, TEXAS

FINAL JUDGMENT

A trial on the merits was held on 4 November 2015. Plaintiff City of Houston and Defendant Ken Paxton[1], Attorney General of Texas, appeared by counsel of record and announced ready. This is a consolidated lawsuit under the Public Information Act, by which Plaintiff sought declaratory relief from three open records rulings of the Attorney General. The rulings require Houston to release the dates of birth of members of the public.

During the pendency of this lawsuit, the Third Court of Appeals at Austin issued a 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.), which held dates of birth of members of the public are protected from disclosure under Texas Government Code section 552.101, in conjunction with common-law privacy. The Attorney General filed a petition for review. On September 9, 2015, the Supreme Court of Texas denied the petition for review in *Paxton v. City of Dallas*, No. 15-0493. Because the *Paxton v. City of Dallas* decision is dispositive of the issue in the instant lawsuit, the Court enters the following declaration and orders.

[1] Greg Abbott was named defendant in his official capacity as Texas Attorney General. Ken Paxton became the Texas Attorney General on 2 January 2015, and is now the appropriate defendant in this cause.

IT IS THEREFORE ORDERED AND DECLARED that:

1. Pursuant to *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 of Houston must withhold the requested dates of birth of members of the public under Texas Government Code section 552.101, in conjunction with common law privacy.

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 Order disposes of all claims between Plaintiff and Defendant as final and appealable.

Signed this the 4th day of November, 2015.

PRESIDING JUDGE
TIM SULAK

Approved as to form and content:

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