



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

May 15, 2014

Ms. Evelyn W. Kimeu
Staff Attorney
City of Houston Police Department
1200 Travis
Houston, Texas 77002-6000

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

OR2014-08308

Dear Ms. Kimeu:

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# 522751 (ORU No. 14-1258).

The Houston Police Department (the "department") received a request for (1) the offense, date, and location of arrest; and (2) the name, date of birth, and address of the arrestee for all department arrests during a specified period of time. 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 representative sample of information.¹

Section 552.101 of the Government Code excepts "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

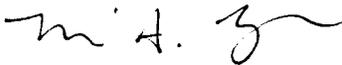
¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested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

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. We note, however, 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). Upon review, we find the dates of birth at issue are not highly intimate or embarrassing information of no legitimate public concern. Thus, this information may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no other exceptions to disclosure, the submitted 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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/bhf

Ref: ID# 522751

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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

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

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

FINAL JUDGMENT

A trial on the merits was held on 4 November 2015. Plaintiff City of Houston and Defendant Ken Paxton¹, 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.

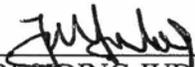
During the pendency of this lawsuit, the Third Court of Appeals at Austin issued a decision in *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061 (Tex. App.—Austin, May 22, 2015, pet. denied) (mem. op.), which held dates of birth of members of the public are protected from disclosure under 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:

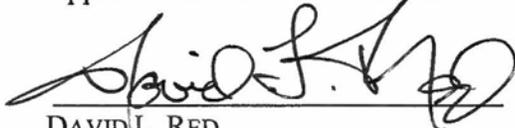
1. Pursuant to *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061 (Tex. App.—Austin, May 22, 2015, pet. denied) (mem. op.), the City of Houston must withhold the requested dates of birth of members of the public under Texas Government Code section 552.101, in conjunction with common law 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.



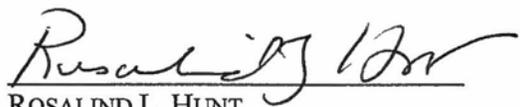
PRESIDING JUDGE
TIM SUCK

Approved as to form and content:



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