



**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

June 30, 2014

Ms. Heather Silver  
Assistant City Attorney  
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.**

OR2014-11117

Dear Ms. Silver:

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# 527426.

The City of Dallas (the “city”) received a request for “[a]ll Dallas Fire-Rescue records related to the April 1, 2014, request to investigate” a named officer. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ

denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution).

You state the submitted information relates to a pending criminal prosecution. You further state, and have provided a letter in support of your statement from the Louisiana Department of Public Safety and Corrections (the "department"), release of the information at issue would interfere with the prosecution, and the department requests the city protect the information at this time.

We note, however, the submitted information includes a notice of withdrawal of driving privileges. The department provided a copy of this form to the arrestee. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Accordingly, the notice of withdrawal may not be withheld under section 552.108.

Based on the submitted representations and our review, we find the release of the remaining information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the notice of withdrawal, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>1</sup>

The notice of withdrawal contains information subject to section 552.130 of the Government Code.<sup>2</sup> Section 552.130 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. *See* Gov't Code § 552.130. Accordingly, the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

To summarize: With the exception of the notice of withdrawal of driving privileges, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the department. In releasing the notice of withdrawal of driving privileges, the city must withhold the motor vehicle record information we have marked in the notice under section 552.130 of the Government Code.

---

<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470(1987).

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](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 527426

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Filed In The District Court  
of Travis County, Texas  
on 1/15/2015  
at 1:43 M.  
Velva L. Price, District Clerk

Cause No. D-1-GN-14-002287

CITY OF DALLAS, <i>Plaintiff,</i>	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	
	§	200th JUDICIAL DISTRICT
	§	
GREG ABBOTT, ATTORNEY GENERAL OF TEXAS, <i>Defendant.</i>	§	TRAVIS COUNTY, TEXAS

**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 the Attorney General of Texas, 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, Ms. Tanya Eiserer, on December 23, 2014, informing her of the setting of this matter on the uncontested docket on this date. The requestor was informed of the parties' agreement that the City may withhold the redacted portions of the information at issue. The requestor was also informed of her right to intervene in the suit to contest the withholding of this information. A copy of the certified mail receipt is attached to this judgment as Exhibit "B."

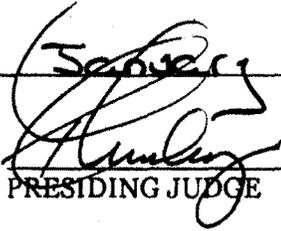
The requestor has not filed a motion to intervene.

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.

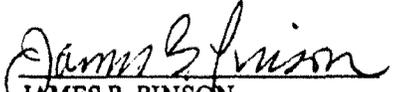
IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. Portions of the information at issue, specifically the employee's date of birth and home address listed on the form entitled "notice of withdrawal of driving privileges," are excepted from disclosure pursuant to Sections 552.102 and 552.024 of the Texas Government Code.
2. The City may withhold and redact from the requestor the information described in Paragraph 1 of this Agreement, as well as the information Letter Ruling OR2014-11117 found to be excepted from disclosure.
3. All court cost and attorney fees are taxed against the parties incurring the same;
4. All relief not expressly granted is denied; and
5. This Agreed Final Judgment finally disposes of all claims between the City and the Attorney General and is a final judgment.

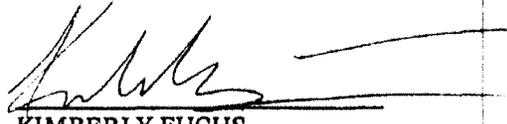
SIGNED the 15<sup>th</sup> day of January, 2015.

  
\_\_\_\_\_  
PRESIDING JUDGE

AGREED:

  
JAMES B. PINSON  
State Bar No. 16017700  
Assistant City Attorney  
Dallas City Attorney's Office  
1500 Marilla Street, Room 7BN  
Dallas, Texas  
Telephone: (214) 670-3519  
Facsimile: (214) 670-0622  
james.pinson@dallascityhall.com

ATTORNEY FOR PLAINTIFF

  
KIMBERLY FUCHS  
State Bar No. 24044140  
Chief, Open Records Litigation  
Administrative Law Division  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
Telephone: (512) 475-4195  
Facsimile: (512) 320-0167  
kimberly.fuchs@texasattorneygeneral.gov

ATTORNEY FOR DEFENDANT

A

Cause No. D-1-GN-14-002287

CITY OF DALLAS, <i>Plaintiff,</i>	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	
	§	200th JUDICIAL DISTRICT
GREG ABBOTT, ATTORNEY GENERAL OF TEXAS, <i>Defendant.</i>	§	
	§	
	§	TRAVIS COUNTY, TEXAS

**SETTLEMENT AGREEMENT**

This Settlement Agreement (Agreement) is made by and between the City of Dallas (the "City") and the Attorney General of Texas. This Agreement is made on the terms set forth below.

**Background**

On April 8, 2014 the City received a written request for information from Tanya Eiserer of WFAA-TV under the Public Information Act (PIA). The request was for all records relating to a request to investigate a named City fire department employee.

The City asked for an open records ruling from the Attorney General, pursuant to the PIA, Tex. Govt. Code Section 552.301.

The Attorney General issued Letter Ruling OR2014-11117 (2014) in response to the City's request. The ruling concluded, in pertinent part, that the City must disclose a form entitled "notice of withdrawal of driving privileges" relating to the named employee. The City disputed the ruling and filed a lawsuit, styled Cause No. D-1-GN-14-002287, *City of Dallas v. Greg Abbott, Attorney General of Texas*, in the 200th Judicial District Court of Travis County, Texas (this lawsuit), to preserve its rights under the PIA. Specifically, the City argued that Texas Government Code section 552.102 excepts the employee's date of

birth from disclosure, and Texas Government Code section 552.024 excepts the employee's home address from disclosure.

The City submitted additional information to the Attorney General establishing the document in question is part of a personnel file, making section Texas Government Code section 552.102 applicable to the employee's date of birth. The City also submitted the employee's Public Access Option Form, which shows that the employee has elected to keep his home address confidential under Texas Government Code section 552.024. The Attorney General agreed that the employee's date of birth and home address should be redacted in accordance with these sections.

Tex. Govt. Code Section 552.325(c) allows the Attorney General to enter into settlement under which the information at issue in this 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. Portions of the information at issue, specifically the employee's date of birth and home address listed on the form entitled "notice of withdrawal of driving privileges," are excepted from disclosure pursuant to Sections 552.102 and 552.024 of the Texas Government Code.

2. The City may withhold and redact from the requestor the information described in Paragraph 1 of this Agreement, as well as the information Letter Ruling OR2014-11117 found was excepted from disclosure.

3. 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. The Court, in entering final judgment, will attach this Settlement Agreement as Exhibit "A".

4. 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.

5. If the requestor intervenes to contest the withholding, a final judgment entered in this lawsuit after a requestor intervenes prevails over this Agreement to the extent of any conflict.

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

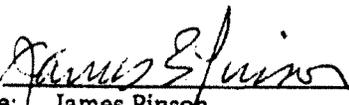
7. The terms of this Agreement are contractual and not mere recitals, and the agreements contained herein and the mutual consideration transferred is to compromise disputed claims fully, and nothing in this Agreement shall be construed as an admission of fault or liability, all fault and liability being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

8. 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.

9. 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.

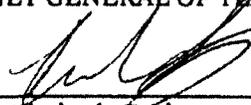
10. This Agreement shall become effective, and be deemed to have been executed, on the date on which the last of the undersigned parties sign this Agreement.

CITY OF DALLAS

By:   
Name: James Pinson  
Title: Assistant City Attorney, City of Dallas

Date: 12/18/2014

GREG ABBOTT,  
ATTORNEY GENERAL OF TEXAS

By:   
Name: Kimberly Fuchs  
Title: AAG, Administrative Law Division

Date: 12/23/14