



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 23, 2016

Mr. David V. Overcash  
Counsel for the City of Anna  
Wolfe, Tidwell & McCoy, LLP  
2591 Dallas Parkway, Suite 300  
Dallas, Texas 75034

OR2016-06630

Dear Mr. Overcash:

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# 602600 (City File No. C03029PIR20151228-01).

The City of Anna (the "city"), which you represent, received a request for a specified incident report involving a named individual. You state you released some information. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions 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." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Indus. Found.* at 682. In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy

interest substantially outweighed the negligible public interest in disclosure.<sup>1</sup> *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at \*3.

You seek to withhold dates of birth from the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, the requestor states she is requesting the information on behalf of the individual named in the request. Thus, the requestor may be the authorized representative of that individual, and may have a right of access to information pertaining to her that would otherwise be confidential under common-law privacy. See Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, if the requestor is acting as the authorized representative of the named individual, then the city may not withhold the marked information pertaining to the named individual from this requestor under section 552.101 on the basis of common-law privacy. If the requestor is not acting as the authorized representative of the named individual, the city must withhold the marked information pertaining to the named individual under section 552.101 in conjunction with common-law privacy. We also note the requestor has a right of access to her own date of birth under section 552.023 of the Government Code and it may not be withheld from her under section 552.101 in conjunction with common-law privacy. See Gov't Code § 552.023(a); ORD No. 481 at 4. Thus, the city generally must withhold the public citizens' dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy; but if the requestor is acting as the named individual's authorized representative, then the city may not withhold the named individual's date of birth from this requestor. However, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Some of the remaining information is subject to section 552.1175 of the Government Code.<sup>2</sup> Section 552.1175 provides in part:

(a) This section applies only to:

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<sup>1</sup>Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). Some of the remaining information, which we marked, relates to an officer who is employed by another city's police department. Accordingly, to the extent the officer elects to restrict access to his marked information in accordance with section 552.1175(b), the city must withhold the marked information that pertains to the officer under section 552.1175 of the Government Code. If the officer does not elect to restrict access to his information in accordance with section 552.1175(b), the marked information pertaining to the officer may not be withheld under section 552.1175.

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. *See id.* § 552.130. We note section 552.130 protects personal privacy. As discussed above, the requestor may be the authorized representative of the named individual, and may have a right of access to information pertaining to her that would otherwise be confidential. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, if the requestor is acting as the authorized representative of the named individual, then the city may not withhold the marked information pertaining to the named individual from this requestor under section 552.130. If the requestor is not acting as the authorized representative of the named individual, the city must withhold the marked information pertaining to the named individual in addition to the remaining information we have marked under section 552.130. Additionally, the requestor has a right of access to her own motor vehicle record information, and this information may not be withheld from her under section 552.130. *See Gov't Code* § 552.023(a); ORD 481 at 4.

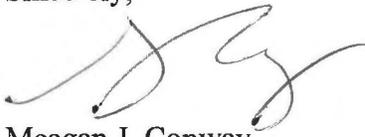
In summary, if the requestor is not acting as the authorized representative of the named individual, the city must withhold the marked information pertaining to the named individual under section 552.101 of the Government Code in conjunction with common-law privacy and must withhold the marked information pertaining to the named individual under section 552.130 of the Government Code. In any event, the city (1) must withhold the

remaining public citizens' dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy, (2) must withhold the marked information that pertains to the officer under section 552.1175 of the Government Code, if the officer elects to restrict access to his marked information in accordance with section 552.1175(b) of the Government Code, (3) must withhold the remaining motor vehicle record information we marked under section 552.130 of the Government Code, and (4) must release the remaining information.<sup>3</sup>

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,



Meagan J. Conway  
Assistant Attorney General  
Open Records Division

MJC/akg

Ref: ID# 602600

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note the requestor has a right of access to some of the information being released in this instance. *See Gov't Code* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); ORD 481 at 4 (privacy theories not implicated when individuals request information concerning themselves). Thus, if the city receives another request for the same information from a different requestor, the city must again seek a decision from this office.