



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 27, 2016

Ms. Captoria Brown
Paralegal
City of Carrollton
1945 East Jackson Road
Carrollton, Texas 75006

OR2016-12136

Dear Ms. Brown:

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# 612033 (City ID# 7012AG).

The City of Carrollton (the "city") received two requests from the same requestor for information concerning a specified case. The city states it has no information responsive to a portion of the requests.¹ The city released information responsive to the remaining portions of the requests but made redactions as permitted by section 552.130 of the Government Code without requesting a decision from this office. *See* Gov't Code § 552.130(c). Pursuant to section 552.130(d), the requestor has asked this office to review the information and render a decision as to whether it is excepted from disclosure under section 552.130(a) of the Government Code. We have considered the city's position and reviewed the information.

Initially, we note you have also redacted dates of birth of members of the public. You do not assert, nor does a review of our records indicate, the city is authorized to withhold that information without seeking a ruling from this office. *See id.* § 552.301; Open Records Decision No. 673 (2001). Accordingly, the city was required to seek a ruling to withhold that information, and it did not meet the procedural deadlines under section 552.301(b) of the

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1–2 (1990).

Government Code. *See* Gov't Code § 552.301(b). Nonetheless, section 552.101 of the Government Code provides a compelling reason to withhold information from disclosure, so we will consider the applicability of that exception to the information at issue. *See id.* § 552.302.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 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. *Id.* at 682. In considering whether a member of the public’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.² *Tex. 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 members of the public, and thus, dates of birth of members of the public are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. Accordingly, the city must withhold all dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator’s or driver’s license or permit and a motor vehicle title or registration issued by an agency of this state or another state or country. Gov’t Code § 552.130(a)(1)–(2). Accordingly, the city must withhold the motor vehicle record information you marked under section 552.130 of the Government Code.

In summary, the city must withhold the dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy and the motor vehicle record information you marked under section 552.130 of the Government Code. The city must release the remaining information.

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.

²Section 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).

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,

A handwritten signature in black ink, appearing to read "Neal Falgoust". The signature is fluid and cursive, with a small mark at the end.

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/eb

Ref: ID# 612033

Enc. Submitted documents

c: Requestor
(w/o enclosures)