



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 4, 2016

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

OR2016-24682

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# 639846 (City File Nos. W000703-100216 and W000707-100416).

The City of Anna (the "city"), which you represent, received two requests from the same requestor for information pertaining to two named individuals at a specified address, including two specified incidents. The city indicates it 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. *Id.* 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. We note the requestor has a right of access to her private information that is otherwise protected under common-law privacy under section 552.023 of the Government Code. See Gov't Code § 552.023(a); Open Records Decision No. 481 at (4) (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, with the exception of the date of birth belonging to the requestor, the city must withhold all public citizens' dates of birth in the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

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 Gov't Code § 552.130. We note, because section 552.130 is designed to protect the privacy of individuals, the requestor has a right of access to her motor vehicle information pursuant to section 552.023 of the Government Code. See *id.* § 552.023(b); ORD 481 at 4. Accordingly, the city may not withhold the requestor's motor vehicle record information from her under section 552.130. Accordingly, with the exception of the requestor's motor vehicle record information, the city must withhold the motor vehicle record information it marked under section 552.130 of the Government Code.

In summary, with the exception of the date of birth belonging to the requestor, the city must withhold all public citizens' dates of birth in the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the requestor's motor vehicle record information, the city must withhold the motor vehicle record information it 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.

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

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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).

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 that reads "Paige Thompson". The signature is written in a cursive, flowing style.

Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/eb

Ref: ID# 639846

Enc. Submitted documents

c: Requestor  
(w/o enclosures)