



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 28, 2013

Mr. Warren Ernst
Chief of the General Counsel Division
Office of the City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2013-03463

Dear Mr. Ernst:

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# 484140.

The City of Dallas (the "city") received a request for a specified data report. You state you will release some information to the requestor. You claim the submitted dates of birth are 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

Initially, we note, and you acknowledge, that the city failed to comply with the statutory time period prescribed by section 552.301 of the Government Code. *See* § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released, unless the governmental body demonstrates a

¹We assume the "representative sample" of information 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 those submitted to this office.

compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). In this instance, section 552.101 can provide a compelling reason to overcome this presumption. Therefore, we will address your arguments under this exception.

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. This exception encompasses information other statutes make confidential. You also argue the submitted dates of birth are excepted from disclosure under section 552.101 in conjunction with section 521.051 of the Business and Commerce Code.² Section 521.051(a) provides that

[a] person may not obtain, possess, transfer, or use personal identifying information of another person without the other person’s consent, and with intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the other person’s name.

Bus. & Comm. Code § 521.051(a) (formerly Bus. & Comm. Code § 48.101(a)). “Personal identifying information” is defined as “information that alone or in conjunction with other information identifies an individual” and includes an individual’s date of birth. *Id.* § 521.002(a)(1)(A). You assert the marked dates of birth meet the definition of “personal identifying information” under section 521.002(a)(1) of the Business and Commerce Code. *See id.* § 521.002(a)(1). We note section 521.051(a) of the Business and Commerce Code does not prohibit the transfer of personal identifying information of another person unless the transfer is made with the intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the other person’s name without that person’s consent. *See id.* § 521.051(a). In this instance, the city’s release of the information at issue would be for the purpose of complying with the Act and not “with intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value[.]” *See id.* Therefore, section 521.051(a) does not prohibit the city from transferring the information at issue. *See id.* We therefore conclude the city may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 521.051 of the Business and Commerce Code.

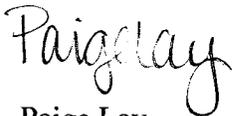
²Although you also cite to section 521.002 of the Texas Business and Commerce Code, that section defines terms for purposes of chapter 521 of the Business and Commerce Code and does not make information confidential.

You also claim section 552.101 of the Government Code in conjunction with common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. You seek to withhold the dates of birth of members of the public on this basis. We note 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). We therefore conclude the city may not withhold any of the dates of birth at issue under section 552.101 of the Government Code in conjunction with common-law privacy. As no raise no further exceptions to disclosure, the submitted dates of birth 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 484140

Enc. Submitted documents

cc: Requestor
(w/o enclosures)