



**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

February 19, 2014

Ms. Heather Silver  
Assistant City Attorney  
Office of the 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.**

OR2014-03053

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# 514385.

The Dallas Police Department (the "department") received a request for information pertaining to a specified incident. You state you will release some of the requested information upon receipt of payment. You claim the submitted information is 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.<sup>1</sup>

Initially, you assert the City of Dallas, in *City of Dallas v. Greg Abbott, Attorney Gen. of Tex.*, Cause No. D-1-GV-12-000861 in the 53rd District Court of Travis County, Texas, argued and was granted summary judgment that the dates of birth for non-public individuals are excepted from disclosure under section 552.101 of the Government Code in conjunction

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<sup>1</sup>We assume that the "representative sample" of records 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 that those records contain substantially different types of information than that submitted to this office.

with common-law privacy. However, upon review, we find the court's decision is limited to the facts and information at issue in the underlying letter ruling, and does not apply to the information currently at issue. Accordingly, the department may not withhold dates of birth in Exhibit B based on the court's decision in that case.

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 information protected by section 773.091 of the Health and Safety Code, which provides as follows:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). Thus, except for the information specified in section 773.091(g), emergency medical services records are deemed confidential under section 773.091. *See id.* § 773.091. Upon review, we find section 773.091 of the Health and Safety Code is applicable to Exhibit C. Therefore, with the exception of the information subject to section 773.091(g), the department must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.

You also argue the dates of birth in Exhibit B are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 521.051 of the Business and Commerce Code.<sup>2</sup> Section 521.051(a) of the Business and Commerce Code 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

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<sup>2</sup>Although 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.

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 department'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 department from transferring the information at issue. *See id.* We therefore conclude the department may not withhold any of the information at issue in Exhibit B under section 552.101 of the Government Code in conjunction with section 521.051 of the Business and Commerce Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We note, however, 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). Upon review, we find the dates of birth at issue in Exhibit B are not highly intimate or embarrassing information of no legitimate public concern. Therefore, this information may not be withheld under section 552.101 of the Government Code on this basis.

In summary, with the exception of the information subject to section 773.091(g), the department must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. The department must release the remaining information to the requestor.

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,

A handwritten signature in black ink, appearing to read 'Thana Hussaini', written over a horizontal line.

Thana Hussaini  
Assistant Attorney General  
Open Records Division

TH/som

Ref: ID# 514385

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

OCT 21 2015

At 3:00 P M.  
Velva L. Price, District Clerk

Cause No. D-1-GV-12-001471

CITY OF DALLAS,  
*Plaintiff,*

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IN THE DISTRICT COURT OF

v.

GREG ABBOTT,  
ATTORNEY GENERAL OF TEXAS,  
*Defendant.*

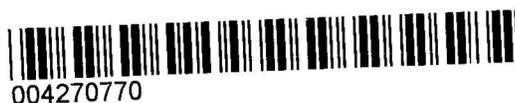
TRAVIS COUNTY, TEXAS

53rd JUDICIAL DISTRICT

**FINAL JUDGMENT**

On October 20, 2015, the above-styled and numbered cause came on for trial. Plaintiff, the City of Dallas, and Defendant, Ken Paxton, Attorney General of Texas, appeared by counsel of record and announced ready. 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. The parties submitted all matters in controversy, legal and factual, to the Court. The Court renders judgment for the City of Dallas.

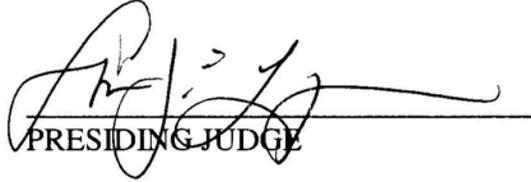
In accordance with *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061 (Tex. App.—Austin May 22, 2015, pet. denied), it is ADJUDGED, ORDERED, and DECREED that the dates of birth of members of the public that are subject to the following attorney general rulings are excepted from disclosure under PIA section 552.101 as information coming within the common-law right of privacy: OR2012-15687, OR2013-13460, OR2013-14173, OR2013-15029, OR2014-02027, OR2014-03053, OR2014-10958, OR2014-12007, OR2014-13280, OR2015-00856, OR2015-03225, OR2015-04746, OR2015-06486, OR2015-09796, OR2015-09650, OR2015-12740, OR2015-12882, OR2015-11167, OR2015-12505, OR2015-14442, OR2015-12568, OR2015-15076, OR2015-14991, OR2015-15428, OR2015-15574, OR2015-16409, OR2015-16823, OR2015-17001, OR2015-16711, OR2015-17686, OR2015-17639, and OR2015-18652.



All relief not expressly granted is denied.

This judgment disposes of all claims between all parties and is a final judgment.

SIGNED on the 20<sup>th</sup> day of OCTOBER, 2015.

  
PRESIDING JUDGE

APPROVED AS TO FORM:

  
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