



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 11, 2014

Ms. Heather Silver  
Assistant City Attorney  
City of Dallas  
1500 Marilla Street, Room 7DN  
Dallas, Texas 75201

OR2014-04114

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# 516262.

The City of Dallas (the "city") received a request for the following information pertaining to boarding home facilities as defined by the city code for a specified time period: all requests for boarding home facility licenses that have been submitted, approved, and/or issued; all inspections done by the city on boarding home facilities, as required by city ordinance; and any notices of non-compliance, violations, penalties, and fines to the boarding home facility licensees or potential licensees.<sup>1</sup> You state the city will release some of the requested information with redactions made pursuant to Open Records Decision

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<sup>1</sup>You state, and submit documentation which demonstrates, the city sought and received clarification of the request for information. See Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

No. 684 (2009).<sup>2</sup> 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>3</sup>

Initially, you assert the date of birth at issue is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy on the basis of the decision in *City of Dallas v. Abbott*, No. D-1-GV-12-000861 (53rd Dist. Ct., Travis County, Tex., July 11, 2013). However, upon review, we find the court's decision is limited to the facts and information at issue in the underlying letter rulings, and does not apply to the information currently at issue. Accordingly, the city may not withhold the date of birth in the information at issue 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. This section encompasses information protected by other statutes. We understand you to contend the date of birth at issue is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 521.051 of the Business and Commerce Code. Section 521.051(a) of the Business and Commerce Code provides:

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" means "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 date of birth meets 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.

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<sup>2</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold specific categories of information without the necessity of requesting an attorney general decision. ORD 684.

<sup>3</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

*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) of the Business and Commerce Code does not prohibit the city from transferring the requested information. Accordingly, the city may not withhold the marked date of birth under section 552.101 in conjunction with section 521.051 of the Business and Commerce Code.

Section 552.101 of the Government Code also encompasses section 290dd-2 of title 42 of the United States Code.<sup>4</sup> Section 290dd-2 provides, in part, the following:

(a) Requirement. Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

42 U.S.C. § 290dd-2(a); *see* 42 C.F.R. §§ 2.1 (records of identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with performance of drug abuse prevention function conducted, regulated, or directly or indirectly assisted by any department or agency of United States are generally confidential), .12(b) (discussing when an alcohol abuse or drug abuse program is considered to be federally assisted). Thus, section 290dd-2 makes confidential the records of substance abuse patients that are created and maintained as part of their participation and treatment in a federally assisted substance abuse program. *See* 42 U.S.C. § 290dd-2(a). Upon our review, we find the information at issue does not constitute patient records, but rather consists of records created by the city's Department of Code Compliance (the "department") pertaining to the department's inspection and regulation of boarding home facilities. Thus, we find you have failed to establish the information at issue in Exhibit E is confidential under section 290dd-2, and the city may not withhold it under section 552.101 on that basis.

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

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<sup>4</sup>Although you assert some of the submitted information is confidential under section 290ee-3 of title 42 of the United States Code, we note that this section has been omitted from title 42. The confidentiality of substance abuse and mental health records is currently governed by part D of subchapter III-A of chapter 6-A of title 42 of the United States Code (42 U.S.C. §§ 290dd-290dd-3). Pub. L. 102-321, Title I, § 131, July 10, 1992, 106 Stat. 366.

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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 id.* at 7 (home addresses, telephone numbers, and dates of birth not private).

Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have marked in Exhibits C and E under section 552.101 in conjunction with common-law privacy. However, the remaining information at issue is not highly intimate or embarrassing or is of legitimate public interest, and the city may not withhold it under section 552.101 on that basis.

We note a portion of the remaining information is subject to section 552.130 of the Government Code.<sup>5</sup> Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). We conclude the city must withhold the information we have marked in Exhibit D under section 552.130.<sup>6</sup>

In summary, the city must withhold the information we have marked in Exhibits C and E under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked in Exhibit D 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.

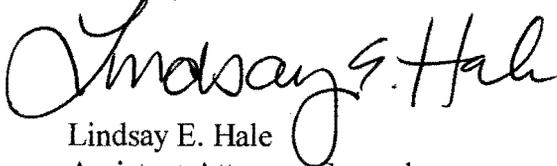
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<sup>5</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>6</sup>We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

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 that reads "Lindsay E. Hale". The signature is written in a cursive style with a large initial "L".

Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/tch

Ref: ID# 516262

Enc. Submitted documents

c: Requestor  
(w/o enclosures)