



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.



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 29, 2015

Ms. Tiffany Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

OR2015-10534

Dear Ms. Evans:

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# 568480 (GC No. 22254).

The City of Houston (the "city") received a request for information pertaining to a specified vehicle. You state the city will release some responsive information to the requestor. You state the city will withhold motor vehicle record information pursuant to section 552.130(c) of the Government Code, social security numbers pursuant to section 552.147(b) of the Government Code, and certain information pursuant to Open Records Decision No. 684 (2009).¹ 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 information.

¹Section 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. *See* 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). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without requesting a decision from this office under the Act. *Id.* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including e-mail addresses subject to section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. ORD 684.

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 made confidential by the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. *See* Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides, in relevant part, the following:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 at 3-4 (1988), 370 at 2 (1983), 343 at 1 (1982). Some of the information you seek to withhold consists of reports of the results of drug tests. Section 159.001 of the MPA defines a “patient” as “a person who, to receive medical care, consults with or is seen by a physician.” Occ. Code § 159.001(3). Because the individual at issue did not receive medical care in the administration of the drug tests, this individual is not a patient for purposes of section 159.002. Upon review, we find the information we have marked is confidential under the MPA. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA. However, we find you have not demonstrated any of the remaining information is confidential under the MPA. Therefore, the city may not withhold any of the remaining information under section 552.101 of the Government Code 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 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). However, we note dates of birth of members of the public are generally not highly intimate or embarrassing. *See* Open Records Decision No. 455 at 7 (1987) (home addresses, telephone numbers, dates of birth not protected under privacy). Upon review, we find that, although some of the submitted information may be highly intimate or embarrassing, the public has a legitimate interest in the information. Further, we find none of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Therefore, the city may not withhold any of the submitted information under section 552.101 of the Government Code on this basis.

We note some of the remaining information is subject to section 552.136 of the Government Code.² Section 552.136 of the Government Code states “Notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. *See* Open Records Decision No. 684 (2009). Upon review, we find the city must withhold the information we have marked under section 552.136 of the Government Code.

In summary, the city must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with the MPA; and (2) the information we have marked under section 552.136 of the Government Code. The remaining information must be released.

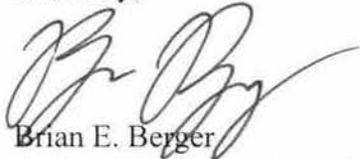
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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.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

²The 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).

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 "Brian E. Berger", written over a printed name.

Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 568480

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Filed in The District Court
of Travis County, Texas
NOV 04 2015
At: 2:11 pm NS
Velva L. Price,

Cause No. D-1-GN-15-002661

THE CITY OF HOUSTON, TEXAS	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
v.	§	98 th JUDICIAL DISTRICT
	§	
GREG ABBOTT, ATTORNEY GENERAL	§	
OF TEXAS,	§	
<i>Defendant.</i>	§	TRAVIS COUNTY, TEXAS

FINAL JUDGMENT

A trial on the merits was held on 4 November 2015. Plaintiff City of Houston and Defendant Ken Paxton¹, Attorney General of Texas, appeared by counsel of record and announced ready. This is a lawsuit under the Public Information Act, by which Plaintiff sought declaratory relief from an open records ruling of the Attorney General. The rulings require Houston to release the dates of birth of members of the public.

During the pendency of this lawsuit, the Third Court of Appeals at Austin issued a decision in *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061 (Tex. App.—Austin, May 22, 2015, pet. denied) (mem. op.), which held dates of birth of members of the public are protected from disclosure under Texas Government Code section 552.101, in conjunction with common-law privacy. The Attorney General filed a petition for review. On September 9, 2015, the Supreme Court of Texas denied the petition for review in *Paxton v. City of Dallas*, No. 15-0493. Because the *Paxton v. City of Dallas* decision is dispositive of the issue in the instant lawsuit, the Court enters the following declaration and orders.

¹ Greg Abbott was named defendant in his official capacity as Texas Attorney General. Ken Paxton became the Texas Attorney General on 2 January 2015, and is now the appropriate defendant in this cause.

IT IS THEREFORE ORDERED AND DECLARED that:

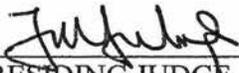
1. Pursuant to *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061 (Tex. App.—Austin, May 22, 2015, pet. denied) (mem. op.), the City of Houston must withhold the requested dates of birth of members of the public under Texas Government Code section 552.101, in conjunction with common law privacy.

2. All court cost and attorney fees are taxed against the parties incurring the same;

3. All relief not expressly granted is denied; and

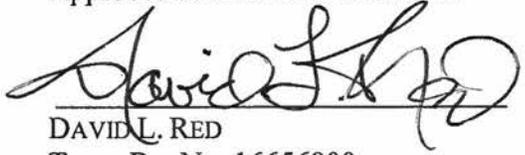
4. This Order disposes of all claims between Plaintiff and Defendant as final and appealable.

Signed this the 4th day of November, 2015.



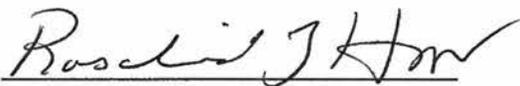
PRESIDING JUDGE
T.M. SUGAR

Approved as to form and content:



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