



**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

June 26, 2015

Mr. Zachary Noblitt  
Assistant 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.**

OR2015-12740

Dear Mr. Noblitt:

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# 568676.

The City of Dallas (the "city") received a request for the report for a specified incident. You state the city will redact information pursuant to section 552.130(c) of the Government Code.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>2</sup> We have considered the exception you claim and reviewed the submitted information.<sup>3</sup>

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<sup>1</sup>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. *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).

<sup>2</sup>The city acknowledges it failed to comply with its procedural obligations under the Act. *See* Gov't Code § 552.301(b), (e). However, because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address the applicability of this exception to the information at issue. *Id.* § 552.302.

<sup>3</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.

You assert the dates of birth at issue are 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). 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. We note in *Paxton v. City of Dallas*, No. 03-13-00546-CV (Tex. App.—Austin, May, 22, 2015) (mem. op.), the Third Court of Appeals of Texas recently affirmed the trial court’s ruling; however, the time for filing a petition for review with the Texas Supreme Court has not expired. Tex. R. App. P. 53.7. 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 dates of birth in the information at issue based on the court’s decision in that case.

Section 552.101 of the Government Code also encompasses information protected by other statutes. You argue the marked dates of birth are 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 the following:

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. & Com. Code § 521.051(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 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). 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 dates of birth 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 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 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 the city has failed to demonstrate the submitted dates of birth are confidential under common-law privacy. Thus, none of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no other exceptions to disclosure, the city must release the submitted 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kristi L. Godden  
Assistant Attorney General  
Open Records Division

KLK/cz

Ref: ID# 568676

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.*

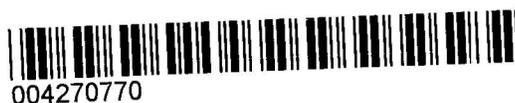
TRAVIS COUNTY, TEXAS

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.

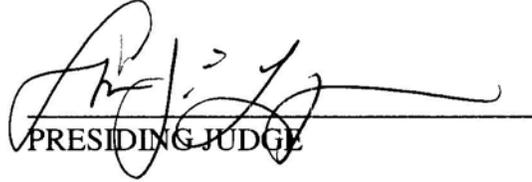
In accordance with *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061 (Tex. App.—Austin May 22, 2015, pet. denied), it is ADJUDGED, ORDERED, and DECREED that the dates of birth of members of the public that are subject to the following attorney general rulings are excepted from disclosure 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.



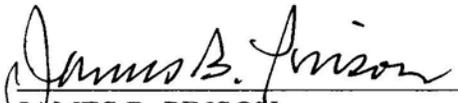
All relief not expressly granted is denied.

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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