



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

August 25, 2015

Ms. P. Armstrong
Assistant City Attorney
Criminal Law & Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

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

OR2015-17686

Dear Ms. Armstrong:

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# 577080 (ORR# 2015-09882).

The Dallas Police Department (the "department") received a request for information relating to a specified case. We understand the department is redacting information pursuant to sections 552.130 and 552.147 of the Government Code.¹ The department claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the department claims and reviewed the submitted representative sample of information.²

¹We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 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 the necessity of requesting a decision from this office. *See id.* § 552.147(b).

²We assume 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 those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 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 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 department has not demonstrated how the dates of birth it has marked are highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold the information at issue under section 552.101 in conjunction with common-law privacy.

The department also asserts the marked dates of birth of members of the public 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 *Paxton v. City of Dallas*, No. 03-00546-CV (Tex. App.—Austin, May 22, 2015, pet. filed) (mem. op.). Although the department references *Paxton v. City of Dallas*, we note a petition for review was filed with the Texas Supreme Court on July 29, 2015. Accordingly, the department may not withhold the dates of birth at issue based on the court’s decision in that case.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The department states the information it has marked pertains to an active criminal investigation or prosecution. Based on the department’s representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the department may withhold the information it has marked under section 552.108(a)(1) of the Government Code. The department 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.

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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 577080

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,

v.

GREG ABBOTT,
ATTORNEY GENERAL OF TEXAS,
Defendant.

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IN THE DISTRICT COURT OF

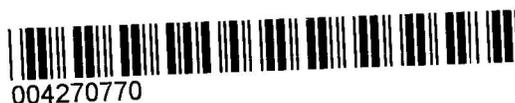
TRAVIS COUNTY, TEXAS

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.

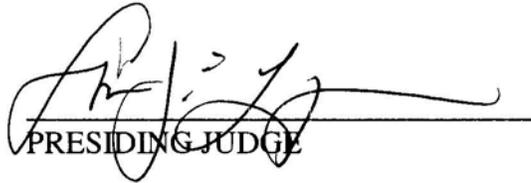
In accordance with *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061 (Tex. App.—Austin May 22, 2015, pet. denied), it is ADJUDGED, ORDERED, and DECREED that the dates of birth of members of the public that are subject to the following attorney general rulings are excepted from disclosure 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 20th day of OCTOBER, 2015.


PRESIDING JUDGE

APPROVED AS TO FORM:



JAMES B. PINSON
State Bar No. 16017700
Assistant City Attorney
Dallas City Attorney's Office
1500 Marilla Street, Room 7BN
Dallas, Texas
Telephone: (214) 670-3519
Facsimile: (214) 670-0622
james.pinson@dallascityhall.com

ATTORNEY FOR PLAINTIFF,
THE CITY OF DALLAS



KIMBERLY FUCHS
State Bar No. 24044140
Chief, Open Records Litigation
Administrative Law Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 475-4195
Facsimile: (512) 320-0167
kimberly.fuchs@texasattorneygeneral.gov

ATTORNEY FOR DEFENDANT,
KEN PAXTON, ATTORNEY GENERAL
OF TEXAS