



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 17, 2015

Ms. Judith N. Benton  
Assistant City Attorney  
Legal Services Department  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2015-19459

Dear Ms. Benton:

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# 581216 (Reference #LGL-15-246).

The City of Waco (the "city") received a request for information pertaining to the death of a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You state the submitted information was the subject of previous requests for information in response to which this office issued Open Records Letter No. 2015-16352 (2015). In Open Records Letter No. 2015-16352, we ruled, in pertinent part, with the exception of information the city has previously released, the city 1) may withhold certain information under section 552.108(a)(1) of the Government Code; 2) must withhold certain information under section 552.152 of the Government Code; and 3) must release the remaining information. We have no indication the law, facts, or circumstances surrounding the previous ruling's determination on items (1) and (2) above have changed. Accordingly, the city must rely on Open Records Letter No. 2015-16352 as a previous determination for

items (1) and (2) above and withhold that information in accordance with that ruling.<sup>1</sup> See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we note the law has changed with regard to dates of birth that were previously ordered released, and the city may not rely on Open Records Letter No. 2015-16352 as a previous determination for that information. Thus, we will address the public availability of the dates of birth at issue.

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 the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. In considering whether a public citizen’s date of birth is private, the Third Court of Appeals looked to the supreme court’s rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees’ dates of birth are private under section 552.102 of the Government Code because the employees’ privacy interest substantially outweighed the negligible public interest in disclosure.<sup>2</sup> *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens’ dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at \*3. Thus, the city must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must rely on Open Records Letter No. 2015-16352 as a previous determination for items (1) and (2) above and withhold that information in accordance with that ruling. The city must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy and release the remaining information at issue subject to Open Records Letter No. 2015-16352.

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<sup>1</sup>As our ruling is dispositive, we need not address your arguments against disclosure of this information.

<sup>2</sup>Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a).

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 cursive script that reads "Paigelay".

Paige Lay  
Assistant Attorney General  
Open Records Division

PL/bhf

Ref: ID# 581216

Enc. Submitted documents

c: Requestor  
(w/o enclosures)