



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 22, 2015

Mr. David V. Overcash  
Counsel for the City of Anna  
Wolfe, Tidwell & McCoy, LLP  
2591 Dallas Parkway, Suite 205  
Frisco, Texas 75034

OR2015-19774

Dear Mr. Overcash:

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# 580339 (File No. C03029PIR20150629-03).

The City of Anna (the "city"), which you represent, received a request for all police records or service calls regarding a specified address during a specified time period. The city states it has released some of the requested information. The city states it will redact information pursuant to sections 552.130, 552.136, and 552.147 of the Government Code.<sup>1</sup> The city claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the city claims and reviewed the submitted information.

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<sup>1</sup>We 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 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(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).

The city asserts the date of birth it has marked is excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 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 the date of birth it has marked under section 552.101 of the Government Code.

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 city states the information it has marked relates to a pending criminal investigation. Upon review, 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 present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the city may withhold the information it has marked under section 552.108(a)(1) of the Government Code.

In summary, the city must withhold the date of birth it has marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city may withhold the

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<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).

information it has marked under section 552.108(a)(1) of the Government Code. The city must release the remaining information.<sup>3</sup>

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,



David L. Wheelus  
Assistant Attorney General  
Open Records Division

DLW/bhf

Ref: ID# 580339

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>Although the requestor is a representative of the Texas Department of Family and Protective Services, she does not indicate, and we are unable to determine, she has a right of access to this information under state or federal law. See Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986).