



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 1, 2015

Ms. Susan Camp-Lee
Counsel for the City of Round Rock
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664-5246

OR2015-20571

Dear Ms. Camp-Lee:

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# 581399.

The City of Round Rock (the "city"), which you represent, received two requests for reports pertaining to several specified event numbers. You state you have released some information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). We note the submitted information contains dates of birth. 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.¹ *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. We note the information at issue contains the date of birth of the second requestor and her spouse. Section 552.023(a) of the Government Code states that a person has a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, the second requestor has a right of access to her own date of birth and her spouse's date of birth if she is acting as her spouse's authorized representative. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect person's privacy interests). Thus, if the second requestor is acting as the authorized representative of her spouse, then the city may not withhold the date of birth of the second requestor's spouse under section 552.101 in conjunction with common-law privacy. If the second requestor is not acting as the authorized representative of her spouse, then the city must withhold the date of birth of the second requestor's spouse under section 552.101 in conjunction with common-law privacy. In either event, the city must withhold the remaining public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

We note common-law privacy also protects other types of information. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See, e.g.*, Open Records Decision No. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). This office has also concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). In addition, a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note records relating to routine traffic violations are not considered criminal history information. *Cf.* Gov't Code § 411.082(2)(B) (criminal history record information does not include driving record information). Further, active warrant information or other information relating to an individual's current involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. *See id.* § 411.081(b) (police

¹Section 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).

department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Upon review, we find most of the information you have marked is highly intimate or embarrassing and of no legitimate public interest. Thus, with the exception of the information we have marked for release, the city must withhold the marked information under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. We note section 552.130 protects privacy interests. As noted above, the second requestor may be the authorized representative of one of the individuals at issue, and may have a right of access to information pertaining solely to the individual that would otherwise be confidential. *See id.* § 552.023; *see* ORD No. 481 at 4. Accordingly, if the second requestor is acting as the authorized representative of her spouse, then the city may not withhold the portions of the marked information pertaining solely to the second requestor's spouse from this requestor under section 552.130. If the second requestor is not acting as this individual's authorized representative, then the city must withhold the information we have marked under section 552.130. In either event, the city must withhold the marked information pertaining to the other individuals under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "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 insurance policy numbers are access device numbers for purposes of section 552.136. We note section 552.136 also protects privacy interests. As noted above, the second requestor may be the authorized representative of one of the individuals at issue, and may have a right of access to information pertaining solely to the individual that would otherwise be confidential. *See id.* § 552.023; *see* ORD No. 481 at 4. Accordingly, if the second requestor is acting as the authorized representative of her spouse, then the city may not withhold the portions of the marked information pertaining solely to this individual from this requestor under section 552.136. If the requestor is not acting as the authorized representative of her spouse, then the city must withhold the information we have marked under section 552.136. In either event, the city must withhold the marked information pertaining to the other individuals under section 552.136 of the Government Code.

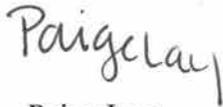
Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *Id.* § 552.147(a). Accordingly, the city may withhold the social security numbers you have marked under section 552.147 of the Government Code. In summary, with the exception of the second requestor's date of birth, the city must generally withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we have marked for release, the city must withhold the marked information under section 552.101 in conjunction with common-law privacy. The city must generally

withhold the information marked under sections 552.130 and 552.136 of the Government Code. However, if the second requestor is acting as the authorized representative of her spouse, then she has a right of access to this individual's information and his date of birth under section 552.023 of the Government Code. The city may withhold the social security numbers you have marked under section 552.147 of the Government Code. The remaining information must be released.²

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 581399

Enc. Submitted documents

c: Requestors
(w/o enclosures)

²We note the second requestor has a special right of access to some of the information being released in this instance. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.