



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 20, 2015

Mr. Zachary Noblitt
Assistant City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2015-21992

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# 583713.

The City of Dallas (the "city") received a request for information concerning a specified incident. The city released information responsive to the request but made redactions as permitted by sections 552.130 and 552.136 of the Government Code without requesting a decision from this office. *See* Gov't Code §§ 552.130(c), .136(c). Pursuant to sections 552.130(d) and 552.136(d), the requestor has asked this office to review the information and render a decision as to whether it is excepted from disclosure under section 552.130(a) and section 552.136(b) of the Government Code. You also claim some of the information you redacted is excepted from disclosure by section 552.101 of the Government Code.¹ We have considered the city's position and the exception you claim and reviewed the information at issue.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit and a motor vehicle title or registration issued by an agency of this state or another state or country. Gov't Code

¹The city did not raise section 552.101 of the Government Code within the required deadlines. *See* Gov't Code § 552.301(b). However, section 552.101 provides a compelling reason for non-disclosure, so we will consider its applicability to the information at issue. *See id.* § 552.302.

§ 552.130(a)(1)–(2). Accordingly, the city must withhold the information we marked under section 552.130 of the Government Code. The remaining information you marked is not subject to section 552.130 and may not be withheld on that basis.

Section 552.136(b) of the Government Code provides, “[n]otwithstanding 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.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). You state the information you marked consists of employee identification numbers, which can be used to access credit union accounts. Accordingly, the city must withhold the information you marked under section 552.136 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. We understand the city is part of an emergency communication district subject to section 772.318 of the Health and Safety Code. Therefore, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 of the Government Code also 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. *See id.* at 681–82. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

The city claims certain dates of birth are also protected by common-law privacy. In considering whether a member of the public’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.² *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 members of the public, and thus, their dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. Accordingly, the city must withhold all dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy.

The city also claims some of the information is protected by common-law privacy as criminal history information. 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. However, information relating to routine traffic violations does not implicate privacy concerns. *Cf. Gov't Code* § 411.081(b). The information you marked concerns routine traffic violations. The city may not withhold that information under section 552.101 of the Government Code in conjunction with common-law privacy. Furthermore, none of the remaining information is highly intimate or embarrassing and may not be withheld under section 552.101 of the Government Code.

In summary, the city must withhold the information we marked under section 552.130 of the Government Code and the information you marked under section 552.136 of the Government Code. The city must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The city must withhold the information we marked and dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release the remaining information.

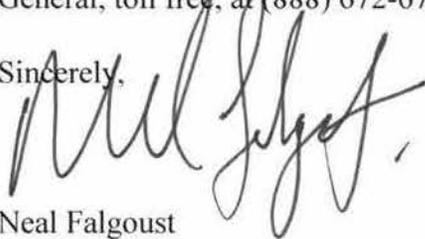
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/>

²Section 552.102(a) exempts 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).

[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 black ink, appearing to read "Neal Falgoust". The signature is fluid and cursive, with a large initial "N" and "F".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/bhf

Ref: ID# 583713

Enc. Submitted documents

c: Requestor
(w/o enclosures)