



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 2, 2015

Ms. LeAnn M. Quinn  
City Secretary  
City of Cedar Park  
450 Cypress Creek Road  
Cedar Park, Texas 78613

OR2015-22966

Dear Ms. Quinn:

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# 585434 (Ref. No. 15-1159).

The City of Cedar Park (the "city") received a request for information pertaining to a specified address. The city states it will release some information. You state you will redact information pursuant to sections 552.130 and 552.147 of the Government Code.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information consists of grand jury subpoenas. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined for purposes of the Act, a grand jury is a part of the judiciary, and therefore, not subject to the Act. *See* Open Records Decision No. 411

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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 552.147(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).

(1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and are also not subject to the Act. *See* Open Records Decisions Nos. 513 (1988). 411. 398 (1983). Thus, to the extent the city holds the information at issue as an agent of the grand jury, such information consists of records of the judiciary that are not subject to disclosure under the Act and the city is not required to release that information in response to the instant request. To the extent the city does not hold the information at issue as an agent of the grand jury, we will address the city's arguments against its disclosure.

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). You state the information in Exhibit C pertains to a pending investigation. Based on your representation and our review, we find release of the information in Exhibit C 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 city may withhold the information in Exhibit C under section 552.108(a)(1) of the Government Code.<sup>2</sup>

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 section 773.091 of the Health and Safety Code, which provides, in relevant part:

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

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(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Health & Safety Code § 773.091(b), (g). Except for the information specified in section 773.091(g), emergency medical services (“EMS”) records are deemed confidential under section 773.091. Upon review, we find the information we have marked constitutes EMS records or information obtained from EMS records subject to chapter 773 of the Health and Safety Code. Thus, with the exception of the information subject to section 773.091(g), the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.<sup>3</sup>

Section 552.101 of the Government Code also encompasses section 182.052 of the Utilities Code provides in relevant part the following:

(a) Except as provided by Section 182.054, a government-operated utility may not disclose personal information in a customer’s account record, or any information relating to the volume or units of utility usage or the amounts billed to or collected from the individual for utility usage, if the customer requests that the government-operated utility keep the information confidential. However, a government-operated utility may disclose information related to the customer’s volume or units of utility usage or amounts billed to or collected from the individual for utility usage if the primary source of water for such utility was a sole-source designated aquifer.

(b) A customer may request confidentiality by delivering to the government-operated utility an appropriately marked form provided under Subsection (c)(3) or any other written request for confidentiality.

Util. Code § 182.052(a)-(b). “Personal information” under section 182.052(a) means an individual’s address, telephone number, or social security number, but does not include an individual’s name. *See id.* § 182.051(4); *see also* Open Records Decision No. 625 (1994) (construing statutory predecessor). The scope of utility services covered by section 182.052 includes water, wastewater, sewer, gas, garbage, electricity, or drainage service. Util. Code § 182.051(3).

You state the information you have marked in the remaining information consists of utility customer account records of an individual who timely elected to keep his personal information confidential. You do not indicate any of the exceptions listed in section 182.054 apply in this instance. Although you seek to withhold the account number of the individual at issue, we note this information is not included in the definition of personal information and, therefore, is not confidential under section 182.052 of the Utilities Code. *See id.* § 182.051(4); *see also* ORD 625. Thus, the city may not withhold the account number at issue under section 552.101 of the Government Code in conjunction with section 182.052

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<sup>3</sup>As our ruling is dispositive, we do not address your other argument to withhold this information.

of the Utilities Code. However, we find the city must withhold the phone number and social security number you have marked under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code.

Section 552.101 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. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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>4</sup> *Tex. 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information you have marked, and the additional information we have marked, as well as the public citizens' dates of birth you have marked satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information you have marked, and the additional information we have marked, as well as the public citizens' dates of birth you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

As noted above, you state you will withhold the information you have marked under section 552.130 of the Government Code. We note some of the remaining information contains additional motor vehicle record information subject to section 552.130. Section 552.130 provides information relating to a motor vehicle operator's or driver's license, title, or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release. *See* Gov't Code § 552.130(a)(1)-(2). Accordingly, the city must withhold the motor vehicle record information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code.

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<sup>4</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).

Section 552.136 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”). Upon review, the city must withhold the account number you have marked, and the additional account number we have marked, under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail address at issue is not within the scope of section 552.137(c). Accordingly, the city must withhold the e-mail address you have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its release.

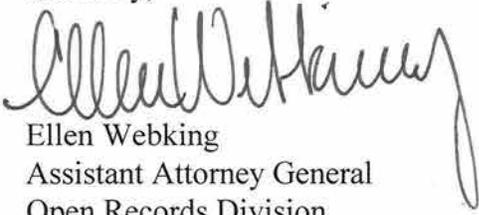
In summary, to the extent the city holds the submitted grand jury subpoenas as an agent of the grand jury, such information consists of a record of the judiciary that is not subject to disclosure under the Act. The city may withhold the information in Exhibit C under section 552.108(a)(1) of the Government Code. The city must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code, except for the information subject to section 773.091(g); (2) the phone number and social security number you have marked under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code; (3) the information you have marked, and the additional information we have marked, as well as the public citizens’ dates of birth you have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (4) the motor vehicle record information you have marked, and the additional information we have marked under section 552.130 of the Government Code; (5) the account number you have marked, and the additional account number we have marked, under section 552.136 of the Government Code; and (6) the e-mail address you have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its release. 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/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 black ink, appearing to read "Ellen Webking". The signature is fluid and cursive, with a long, sweeping tail that extends downwards and to the right.

Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/akg

Ref: ID# 585434

Enc. Submitted documents

c: Requestor  
(w/o enclosures)