



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 18, 2015

Ms. Jessica Giese  
Harker Heights Pet Adoption Manager  
City of Harker Heights  
403 Indian Trail  
Harker Heights, Texas 76548

OR2015-26744

Dear Ms. Giese:

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# 592426.

The City of Harker Heights (the "city") received a request for any incident reports pertaining to the requestor's client. The city claims the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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. This section encompasses section 826.0211(a) of the Health and Safety Code, which reads as follows:

Information contained in a rabies vaccination certificate or in any record compiled from the information contained in one or more certificates that identifies or tends to identify an owner or an address, telephone number, or other personally identifying information of an owner of a vaccinated animal is confidential and not subject to disclosure under [the Act]. The information contained in the certificate or record may not include the social security number or the driver's license number of the owner of the vaccinated animal.

Health & Safety Code § 826.0211(a). Section 826.0211 is applicable only to information contained in a rabies vaccination certificate or in a record compiled from information contained in one or more rabies vaccination certificates. The submitted information includes a rabies vaccination certificate. Therefore, the city must withhold the owner's identifying information within this certificate, which we have marked, under section 552.101 of the Government Code in conjunction with section 826.0211 of the Health and Safety Code. However, we find the city has failed to demonstrate any of the remaining information is confidential under section 826.0211 of the Health and Safety Code. Therefore, the city may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also 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>1</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. The requestor has a right of access to his client's date of birth pursuant to section 552.023 of the Government Code. *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). Nevertheless, the city must withhold the remaining date of birth, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

We note section 552.130 of the Government Code is applicable to some of the submitted information.<sup>2</sup> Section 552.130 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

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<sup>1</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).

<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

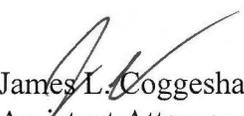
release. *See* Gov't Code § 552.130. The city must withhold the information we have marked under section 552.130 of the Government Code.

To conclude, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 826.0211 of the Health and Safety Code and common-law privacy. The city must also withhold the information we have marked under section 552.130 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,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/eb

Ref: ID# 592426

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>Because the requestor has a special right of access to some of the information being released, the city must again seek a decision from this office if it receives another request for the same information from another requestor.