



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 30, 2015

Mr. M. Matthew Ribitzki
Deputy City Attorney
Burleson Police Department
141 West Renfro Street
Burleson, Texas 76028

OR2015-27261

Dear Mr. Ribitzki:

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# 592559 (city ORR#s 657, 688).

The City of Burleson (the "city") received three requests for information pertaining to a specified incident.¹ The first requestor also seeks information pertaining to a report involving named individuals, and the third requestor additionally seeks information pertaining to a specified address. You state you have released some information to the respective requestors. You state the city will redact information pursuant to sections 552.130(c) and 552.147(b) of the Government Code and Open Records Decision No. 684 (2009).² You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

¹For purposes of this ruling, the requestors will be referred to as the "first," "second," and "third" requestors based on the chronological dates on which the city received their requests for information.

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 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 the social security number of a living person without the necessity of requesting a decision from this office under the Act. *See id.* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including e-mail addresses under section 552.137, without the necessity of requesting an attorney general decision.

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 of the Government Code 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has found common-law privacy generally protects the identifying information of a juvenile victim of abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. In addition, 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. *Indus. Found.*, 540 S.W.2d 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.³ *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.

Accordingly, the city must generally withhold all public citizens’ dates of birth, as well as the information we have marked and indicated, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note section 552.023 of the Government Code states a person has a special right of access to information that relates to the person and that is protected from disclosure by laws intended to protect the person’s privacy interest. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (governmental body may not deny access to whom information relates or person’s authorized representative on grounds that information is considered confidential by privacy principles). Thus, the requestors have special rights of access to their own information, and the city may not withhold the requestors’ respective dates of birth from them under section 552.101 on the basis of common-law privacy. In addition, we note the submitted information contains the date of birth of the spouse of the third requestor. To the extent the third requestor is acting as the authorized representative of her spouse, she also has a special right of access to her spouse’s date of birth under section 552.023, and that information may not be withheld

³Section 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).

from her under section 552.101 on the basis of common-law privacy. Further, we note the first requestor has a right of access under section 552.023 to information pertaining to her child, and thus, the information we have indicated on the submitted audio recording may not be withheld from the first requestor under section 552.101 on the basis of common-law privacy. Finally, the second requestor has a right of access to the marked medical information under section 552.023. Accordingly, the medical information we marked may not be withheld from the second requestor under section 552.101 in conjunction with common-law privacy.

In summary, the city must withhold the public citizens' dates of birth in the submitted information, and the additional information we have marked and indicated, under section 552.101 of the Government Code in conjunction with common-law privacy, unless the respective requestors have rights of access to this information under section 552.023.

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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/eb

Ref: ID# 592559

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)