



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 15, 2016

Mr. Ryan D. Pittman
Counsel for City of Wylie
Abernathy Roeder Boyd & Hullett, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2016-01260

Dear Mr. Pittman:

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# 594319.

The City of Wylie (the "city"), which you represent, received a request for information concerning a specified DWI offense. The city released information responsive to the request but made redactions as permitted by sections 552.024(c)(2) and 552.130(c) of the Government Code without requesting a decision from this office.¹ *See* Gov't Code §§ 552.024(c)(2), .130(c). Pursuant to sections 552.024(c-1) and 552.130(d), the requestor has asked this office to review the information and render a decision as to whether it is excepted from disclosure under sections 552.117(a)(1) and 552.130 of the Government Code. We have considered the city's position and reviewed the information.

¹You state certain redactions were made pursuant to Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold certain categories of information without requesting an attorney general decision. We understand these redactions to be related to motor vehicle record information subject to section 552.130 of the Government Code. The Texas Legislature amended section 552.130 to allow a governmental body to redact information described in section 552.130(a) without a ruling from this office. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor of his right to appeal the redactions in accordance with sections 552.130(e). *See id.* § 552.130(e). Open Records Decision No. 684 does not permit the requestor to appeal such redactions. Thus, the statutory amendment to section 552.130 of the Government Code supercedes Open Records Decision No. 684, and a governmental body may redact information subject to sections 552.130(a) in accordance with section 552.130(c), not Open Records Decision No. 684.

Initially, we note the city redacted dates of birth. You do not assert, nor does a review of our records indicate, the city is authorized to withhold that information without seeking a ruling from this office. *See id.* § 552.301; Open Records Decision No. 673 (2001). Accordingly, the city was required to seek a ruling to withhold that information, but it did not meet the procedural deadlines under section 552.301(b) of the Government Code to do so. *See Gov't Code* § 552.301(b). Nonetheless, this information is protected by section 552.101 of the Government Code, which provides a compelling reason to withhold the information from disclosure. *See id.* § 552.302. Accordingly, we will consider the applicability of section 552.101 to the information at issue.

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 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 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 *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 members of the public, and thus, dates of birth of members of the public are also protected by common-law privacy under 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.

Section 552.117 of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *Gov't Code* § 552.117(a)(1). We note section 552.117 applies only to information held by a governmental body in an employment capacity. The information at issue is held by the city in a law enforcement capacity. Accordingly, section 552.117(a)(1) does not apply in this situation, and the city may not withhold the information you redacted under section 552.117(a)(1) of the Government Code.

²Section 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 552.130 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 § 552.130(a)(1)-(2). Accordingly, the city must withhold the motor vehicle record information you redacted under section 552.130 of the Government Code.

In summary, 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 must withhold the motor vehicle record information you redacted under section 552.130 of the Government Code. 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, 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/eb

Ref: ID# 594319

Enc. Submitted documents

c: Requestor
(w/o enclosures)