



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 24, 2016

Ms. T. Trisha Dang
Assistant City Attorney
City of Sugar Land
P. O. Box 110
Sugar Land, Texas 77487-0110

OR2016-04412

Dear Ms. Dang:

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# 600240.

The City of Sugar Land (the "city") received a request for a specified incident report. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state the submitted information relates to an investigation that "did not result in conviction or deferred adjudication." However, you also provide a representation from a sergeant in the city's police department stating the case is suspended. You do not assert the investigation has concluded. Based on your representations and our review of the information at issue, we find you have failed to demonstrate the submitted information pertains to a criminal case that concluded in a final result other than conviction or deferred adjudication. Therefore, we find you have failed to demonstrate the applicability of section 552.108(a)(2) to the submitted information, and the city may not withhold it on that

basis. *See id.* § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

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 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.¹ *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 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.

Upon review, we find the public citizens’ dates of birth you marked are generally confidential under section 552.101 of the Government Code in conjunction with common-law privacy. In this instance, however, the submitted information reflects the requestor may be the authorized representative of an individual whose date of birth is at issue, and may have a right of access to information pertaining to him that would otherwise be confidential under common-law privacy. Section 552.023(a) of the Government Code states “a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov’t Code § 552.023; *see* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, if the requestor is acting as the authorized representative of an individual whose date of birth is at issue, then the city may not withhold this date of birth from this requestor under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of an individual whose date of birth is at issue, then the city must withhold the dates of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy. In either instance, the city must withhold the remaining date of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy. We find none of the remaining information

¹Section 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).

is highly intimate or embarrassing and of no legitimate public interest. Therefore, the city may not withhold any of the remaining information under section 552.101 of the Government Code on this basis. As no other exceptions to disclosure have been raised, 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,



Kavid Singh
Assistant Attorney General
Open Records Division

KVS/eb

Ref: ID# 600240

Enc. Submitted documents

c: Requestor
(w/o enclosures)