



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 1, 2016

Ms. Maria Gonzalez
City Secretary
City of Missouri City
1522 Texas Parkway
Missouri City, Texas 77489

OR2016-04867

Dear Ms. Gonzalez:

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# 601181.

The City of Missouri City (the "city") received a request for information relating to federal funds provided to the city's police department during a specified period of time, information relating to a named police officer, and the city's policy regarding city employees campaigning while on duty and using city equipment. The city states it will release some of the requested information. The city claims some of the submitted information is excepted from disclosure under sections 552.117 and 552.130 of the Government Code.¹ We have considered the exceptions the city claims 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."² 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

¹Although the city raises section 552.1175, we note section 552.117 is the correct exception to raise for information the city holds in its capacity as employer.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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.³ *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. Thus, the city must withhold the dates of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with section 552.024 or 552.1175 of the Government Code.⁴ Gov't Code § 552.117(a)(2). Accordingly, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code. However, the remaining information the city has marked is not subject to section 552.117(a)(2), and may not be withheld on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or 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 release. *Id.* § 552.130(a). Upon review, we find the city must withhold the motor vehicle record information it has marked, as well as the information we have marked, under section 552.130 of the Government Code.

In summary, the city must withhold (1) the dates of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the information we have marked under section 552.117(a)(2) of the Government Code; and (3) the motor vehicle record information the city has marked, as well as the information we have marked, under section 552.130 of the Government Code. The city must release the remaining information.

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).

⁴Section 552.117(a)(2) adopts the definition of peace officer found in article 2.12 of the Code of Criminal Procedure.

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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 601181

Enc. Submitted documents

c: Requestor
(w/o enclosures)