

March 16, 2016

Mr. Brian J. Knowles
For the City of Hutto
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664-5246

OR2016-06067

Dear Mr. Knowles :

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# 601914.

The City of Hutto (the "city"), which you represent, received a request for information pertaining to a specified arrest. You state the city will redact information pursuant to section 552.130(c) of the Government Code.¹ 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.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.² See Gov't Code § 552.1175. Section 552.1175 applies, in part, to "employees of a district attorney, criminal district attorney, or county or municipal attorney whose

¹We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 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).

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. See Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

jurisdiction includes any criminal law or child protective services matters[.]” *Id.* § 552.1175(a)(5). The submitted information contains personal information of an individual who is subject to section 552.1175(a)(5). Thus, if the individual elects to restrict access to this information in accordance with section 552.1175(b), the city must withhold the information we have marked under section 552.1175 of the Government Code. If no election is made, the city may not withhold this information under section 552.1175 of the Government Code.

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 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. Upon review, in the event the individual whose information is subject to section 552.1175(a)(5) of the Government Code does not elect to restrict access to the information at issue in accordance with section 552.1175(b), 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.

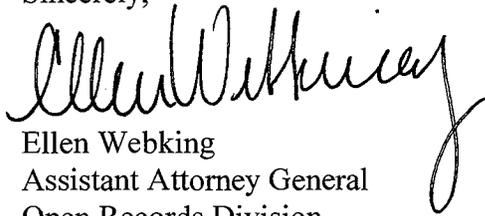
In summary, if the individual at issue elects to restrict access to the information we have marked in accordance with section 552.1175(b), the city must withhold the information we have marked under section 552.1175 of the Government Code. In the event the individual does not elect to restrict access to the information at issue in accordance with section 552.1175(b), 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. 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).

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,

A handwritten signature in black ink, appearing to read "Ellen Webking", written in a cursive style.

Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 601914

Enc. Submitted documents

c: Requestor
(w/o enclosures)