



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 1, 2016

Mr. David Overcash  
Counsel for City of Anna  
Wolfe, Tidwell & McCoy, LLP  
2591 Dallas Parkway, Suite 300  
Frisco, Texas 75034

OR2016-19849

Dear Mr. Overcash:

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# 630588 (City File #: W000654-072216).

The City of Anna (the "city"), which you represent, received a request for records relating to the requestor and to a specified address. You state the city is releasing some information to the requestor. You claim portions of the requested information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note case numbers 16-000096 and 16-000062 were the subject of a previous request for a ruling, in response to which this office issued Open Records Letter No. 2016-08544 (2016). In that ruling, we determined the city (1) must withhold marked motor vehicle record information in accordance with section 552.130 of the Government Code; (2) may withhold the social security numbers under section 552.147 of the Government Code; and (3) must withhold marked dates of birth pursuant to section 552.101 of the Government Code in conjunction with common law privacy. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the city may continue to rely on Open Records Letter No. 2016-08544 (2016) as a previous determination and withhold or release case numbers 16-000096 and 16-000062 in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous

determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we must address the obligations of the city under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). The city received the request for information on July 22, 2016. Accordingly, you were required to provide the information required by section 552.301(b) by August 5, 2016. However, you submitted the required information in an envelope meter-marked August 8, 2016. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the city failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third-party interests. *See* ORD 630. The city claims sections 552.101 and 552.130 of the Government Code for portions of the remaining requested information. Sections 552.101 and 552.130 can provide compelling reasons to overcome the presumption of openness. Therefore, we will address the applicability of sections 552.101 and 552.130 to the remaining requested 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.” 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.<sup>1</sup> *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 agree the department must withhold the dates of birth you have marked in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, 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. *See* Gov't Code § 552.130. Upon review, we find that the information you have marked consists of motor vehicle record information subject to section 552.130. Accordingly, the city must withhold the motor vehicle record information you have marked in the remaining information under section 552.130 of the Government Code.

In summary, the city may continue to rely on Open Records Letter No. 2016-08544 (2016) as a previous determination and withhold or release case numbers 16-000096 and 16-000062 in accordance with that ruling. The city must withhold the dates of birth you have marked in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information you have marked in the remaining information under section 552.130 of the Government Code. The department must release the remaining information.<sup>2</sup>

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](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

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<sup>1</sup>Section 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).

<sup>2</sup>We note the information being released includes social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting an attorney general decision under the Act. *See* Gov't Code § 552.147(b).

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 'Jesse Harvey', with a long, sweeping flourish extending to the right.

Jesse Harvey  
Assistant Attorney General  
Open Records Division

JH/bw

Ref: ID# 630588

Enc. Submitted documents

c: Requestor  
(w/o enclosures)