



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.  
The ruling and judgment can be viewed in PDF  
format below.



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 24, 2015

Mr. Michael Bostic  
Assistant City Attorney  
City of Dallas  
Office of the City Attorney  
1500 Marilla Street, Room 7DN  
Dallas, Texas 75201

**The ruling you have requested has been amended as a result of litigation and has been attached to this document.**

OR2015-15076

Dear Mr. Bostic:

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# 572754.

The City of Dallas (the "city") received a request for information pertaining to a specified complaint. You state the city will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code, as well as privileged under Texas Rule of Evidence 503. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108; [and]

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(1), (17). The submitted information includes a completed investigation that is subject to section 552.022(a)(1). The city must release the completed investigation pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. *See id.* § 552.022(a)(1). The submitted information also contains court-filed documents that are subject to section 552.022(a)(17). This information must be released unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(17). You seek to withhold the information subject to section 552.022(a)(17) under section 552.101 of the Government Code in conjunction with common-law privacy. We note common-law privacy is not applicable to information contained in public court records. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, no portion of the submitted court-filed documents, which we have noted, may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. You further seek to withhold the information subject to section 552.022(a)(1) under section 552.107 of the Government Code. However, section 552.107 is discretionary in nature and does not make information confidential under the Act. *See Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions)*. Therefore, the information subject to section 552.022(a)(1) may not be withheld under section 552.107 of the Government Code. However, the Texas Supreme Court has held the Texas Rules of Evidence are "other law" within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We will therefore consider your assertion of the attorney-client privilege under rule 503 of the Texas Rules of Evidence. We will also consider your arguments against release of the remaining information.

Texas Rule of Evidence 503(b)(1) provides as follows:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to facilitate the rendition of professional legal services to the client:

(A) between the client or the client's representative and the client's lawyer or the lawyer's representative;

(B) between the client's lawyer and the lawyer's representative;

(C) by the client, the client's representative, the client's lawyer, or the lawyer's representative to a lawyer representing another party in a pending action or that lawyer's representative, if the communications concern a matter of common interest in the pending action;

(D) between the client's representatives or between the client and the client's representative; or

(E) among lawyers and their representatives representing the same client.

Tex. R. Evid. 503(b)(1). A communication is "confidential" if it is not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. *Id.* 503(a)(5).

Thus, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must (1) show the document is a communication transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved in the communication; and (3) show the communication is confidential by explaining it was not intended to be disclosed to third persons and it was made in furtherance of the rendition of professional legal services to the client. Upon a demonstration of all three factors, the entire communication is privileged and confidential under rule 503, provided the client has not waived the privilege or the document does not fall within the purview of the exceptions to the privilege enumerated in rule 503(d). *See Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, orig. proceeding).

You assert the information you have marked should be withheld under rule 503. You explain the information at issue consists of privileged attorney-client communications between attorneys for the city and city staff in their capacities as clients. You state the communications at issue were made for the purpose of the rendition of legal services to the city. You state the communications at issue have not been, and were not intended to be, disclosed to third parties. Based on your representations and our review of the information at issue, we find the city has established the information you marked constitutes attorney-client communications under rule 503. Thus, the city may withhold the information you marked pursuant to rule 503 of the Texas Rules of Evidence.

Section 552.101 of the Government Code excepts “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, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See, e.g.*, Open Records Decision Nos. 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). We note dates of birth of members of the public are generally not highly intimate or embarrassing. *See* Open Records Decision No. 455 at 7 (1987) (home addresses, telephone numbers, dates of birth not protected under privacy). Although you reference *Paxton v. City of Dallas*, No. 03-00546-CV (Tex. App.— Austin May 22, 2015) (mem. op.), we note the time for filing a petition for review with the Texas Supreme Court has not expired. Tex. R. App. P. 53.7. Upon review, we find most of the information you have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we find you have not demonstrated how some of the information you marked, including dates of birth of private individuals, is highly intimate or embarrassing and not of legitimate public concern. This information, which we have noted, may not be withheld under section 552.101 in conjunction with common-law privacy. Therefore, except for the information we noted for release, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must release the court-filed documents, which we noted, pursuant to section 552.022(a)(17) of the Government Code. The city may withhold the information you marked under rule 503 of the Texas Rules of Evidence. With the exception of the information we noted for release, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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](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 "Claire Morris Sloan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 575754

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

OCT 21 2015

At 3:00 P M.  
Velva L. Price, District Clerk

Cause No. D-1-GV-12-001471

CITY OF DALLAS,  
*Plaintiff,*

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§

IN THE DISTRICT COURT OF

v.

GREG ABBOTT,  
ATTORNEY GENERAL OF TEXAS,  
*Defendant.*

TRAVIS COUNTY, TEXAS

53rd JUDICIAL DISTRICT

**FINAL JUDGMENT**

On October 20, 2015, the above-styled and numbered cause came on for trial. Plaintiff, the City of Dallas, and Defendant, Ken Paxton, Attorney General of Texas, appeared by counsel of record and announced ready. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552, in which the City of Dallas (the "City"), sought to withhold certain information from public disclosure. The parties submitted all matters in controversy, legal and factual, to the Court. The Court renders judgment for the City of Dallas.

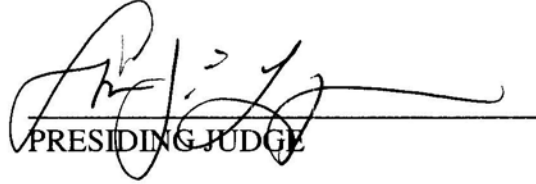
In accordance with *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061 (Tex. App.—Austin May 22, 2015, pet. denied), it is ADJUDGED, ORDERED, and DECREED that the dates of birth of members of the public that are subject to the following attorney general rulings are excepted from disclosure under PIA section 552.101 as information coming within the common-law right of privacy: OR2012-15687, OR2013-13460, OR2013-14173, OR2013-15029, OR2014-02027, OR2014-03053, OR2014-10958, OR2014-12007, OR2014-13280, OR2015-00856, OR2015-03225, OR2015-04746, OR2015-06486, OR2015-09796, OR2015-09650, OR2015-12740, OR2015-12882, OR2015-11167, OR2015-12505, OR2015-14442, OR2015-12568, OR2015-15076, OR2015-14991, OR2015-15428, OR2015-15574, OR2015-16409, OR2015-16823, OR2015-17001, OR2015-16711, OR2015-17686, OR2015-17639, and OR2015-18652.



All relief not expressly granted is denied.

This judgment disposes of all claims between all parties and is a final judgment.


SIGNED on the 20<sup>th</sup> day of OCTOBER, 2015.

  
PRESIDING JUDGE

APPROVED AS TO FORM:

  
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