



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 4, 2015

Ms. Sandra Garcia  
Assistant General Counsel  
Houston Community College  
3100 Main Street - 12<sup>th</sup> Floor  
Houston, Texas 77002

OR2015-23183

Dear Ms. Garcia:

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# 587156.

Houston Community College (the "college") received a request for a specified police report. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim 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." 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. 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. We note an individual has a special right of access to the information pertaining to herself that would otherwise be private. See Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, any information pertaining to the requestor may not be withheld from her under section 552.101 on this basis. Upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the college must withhold all dates of birth of public citizens other than the requestor under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>2</sup>

You state you will withhold information subject to section 552.117(a)(1) of the Government Code pursuant to section 552.024(c) of the Government Code.<sup>3</sup> Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a). We note, however, that section 552.117 applies only to records that a governmental body is holding in an employment capacity. The submitted information is held by the college in a law enforcement context. Thus, section 552.117 is not applicable, and the college may not withhold this information on that basis.

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<sup>1</sup>Section 552.102(a) of the Government Code 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>As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

<sup>3</sup>Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. See Gov't Code § 552.024(c)(2).

In summary, the college must withhold all dates of birth of public citizens other than the requestor under section 552.101 of the Government Code in conjunction with common-law privacy. The college must release the remaining information.<sup>4</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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/eb

Ref: ID# 587156

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note the requestor has a right of access to some of the information being released in this instance. See Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the college receives another request for this information from a different requestor, the college must seek another ruling from this office.