



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 3, 2016

Ms. Alexis G. Allen
Counsel for City of Rowlett
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard Street
Dallas, Texas 75201

OR2016-02677

Dear Ms. Allen:

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# 596490 (Reference No. 74297).

The City of Rowlett (the "city"), which you represent, received a request for all reports concerning the requestor and another named individual during a specified period. You state the city will redact motor vehicle record information under section 552.130 of the Government Code.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 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 if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d

¹Section 552.130(c) of the Government Code authorizes a governmental body to redact motor vehicle record information without a ruling from this office, but the governmental body must notify the requestor. See Gov't Code § 552.130(c)-(e).

668, 685 (Tex 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681–82. A compilation of an individual’s criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual’s criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. We agree this request requires the city, in part, to compile unspecified criminal history records concerning the other named individual and implicates his right to privacy. Therefore, to the extent the city maintains unspecified law enforcement records depicting that other individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.²

We note you have submitted records that do not list the other named individual as a suspect, arrestee, or criminal defendant. That information does not implicate the privacy interest of the named individual and may not be withheld as a compilation of his criminal history under section 552.101 of the Government Code in conjunction with common-law privacy. You have also submitted records that relate to the requestor’s own criminal history. The requestor has a right of access to that information, and the city may not withhold it from her under section 552.101 of the Government Code as a compilation of criminal history information. *See Gov’t Code* § 552.023(b) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); *Open Records Decision No. 481* at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). However, we will consider your other arguments against disclosure of this remaining information.

The remaining information contains dates of birth of members of the public. 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 members of the public, and thus, dates of birth of members of the public are

²This ruling is dispositive of your arguments under chapter 730 of the Transportation Code.

³Section 552.102(a) exempts 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).

also protected by common-law privacy under section 552.101 of the Government Code. *City of Dallas*, 2015 WL 3394061, at *3. However, the requestor has a right of access to her own date of birth. *See Gov't Code* § 552.023. Accordingly, the city must withhold all dates of birth of members of the public, other than the requestor's, under section 552.101 of the Government Code in conjunction with common-law privacy.⁴

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find the information we marked concerns a report of alleged child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). You have not indicated the city's police department has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the information we marked is confidential under section 261.201 of the Family Code and the city must withhold it under section 552.101 of the Government Code.⁵

Section 552.101 of the Government Code also encompasses section 411.192 of the Government Code, which governs the release of information maintained by the Department of Public Safety (“DPS”) concerning the licensure of an individual to carry a concealed handgun. Section 411.192 provides:

(a) [DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any

⁴As our ruling is dispositive, we do not address any remaining arguments against disclosure of this information.

⁵As our ruling is dispositive for this information, we do not address any remaining arguments against disclosure of this information.

individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, zip code, telephone number, e-mail address, and Internet website address. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the [Act].

(b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

Gov't Code § 411.192(a)–(b). The information we marked consists of concealed handgun license information obtained from DPS. The requestor is neither the license holder nor a criminal justice agency. Accordingly, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code.⁶

Section 552.101 of the Government Code also encompasses section 730.004 of the Transportation Code, which provides that “an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.” Transp. Code § 730.004. “Personal information” includes a person's name, address, and driver identification number, but not the zip code. *Id.* § 730.003(6). The Department of Public Safety (“DPS”) is an “agency” for purposes of chapter 730. *See id.* § 730.003(1) (“agency” is state agency that compiles or maintains motor vehicle records). An authorized recipient of personal information may not re-disclose the personal information and to do so is a misdemeanor offense. *Id.* § 730.013(a), (d). Upon review, we find none of the remaining information is made confidential under section 730.004 or 730.013 of the Transportation Code, and the city may not withhold the remaining information under section 552.101 of the Government Code.

In summary, to the extent the city maintains unspecified law enforcement records depicting the other individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold all dates of birth of members of the public, other than the requestor's, under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city must withhold the information we marked under section 552.101 of

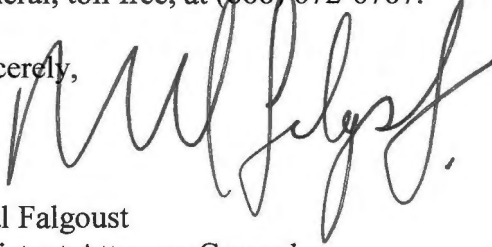
⁶As our ruling is dispositive, we do not address any remaining arguments against disclosure of this information.

the Government Code in conjunction with section 411.192 of the Government Code. 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, 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 "Neal Falgoust". The signature is written in a cursive style with a large, prominent initial "N".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/bhf

Ref: ID# 596490

Enc. Submitted documents

c: Requestor
(w/o enclosures)