



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 11, 2016

Mr. Evaristo Garcia, Jr.
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR2016-03395

Dear Mr. 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# 598089 (McAllen PIR W020813-111715).

The City of McAllen (the "city") received a request for (1) a list of all active warrants and commitments issued by the city's municipal court for failure to pay fines or fees, failure to complete community service, failure to appear, or failure to comply with other sentencing requirements; and (2) complete booking records of every individual booked in the city jail over a specified time period. You claim the requested information is not subject to the Act. In the alternative, you claim some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.¹ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Initially, we note the requestor seeks only a list of all active warrants and commitments issued by the city's municipal court for failure to pay fines or fees, failure to complete community service, failure to appear, or failure to comply with other sentencing requirements. Thus, we find the submitted information pertaining to active warrants other than those specified in the request is not responsive to the instant request. This ruling does

¹We 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 that those records contain substantially different types of information than that submitted to this office.

not address the public availability of non-responsive information, and the city is not required to release non-responsive information in response to this request.

The Act is applicable to information “written, produced, collected, assembled, or maintained under a law or in connection with the transaction of official business by a governmental body.” *Id.* § 552.002(a)(1). However, the Act’s definition of “governmental body” does not include the judiciary. *See id.* § 552.003(1)(B). Information “written, produced, collected, assembled, or maintained by or for the judiciary” is not subject to the Act but, instead, is “governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.” *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under section 552.003(1)(B) of the Government Code prior to enactment of Government Code section 552.0035). Therefore, the Act neither authorizes information held by the judiciary to be withheld, nor does it require such information be disclosed. *See* Open Records Decision No. 25 (1974). You assert the responsive active warrant and booking information consists of judicial records maintained by the city’s municipal court. However, upon review, we find the information at issue may also be maintained by the city’s police department. Thus, to the extent the responsive information is maintained solely by the city’s municipal court, we find the responsive information consists of records of the judiciary, and is thus, not subject to disclosure under the Act. However, to the extent the responsive information is maintained by the city’s police department, it is subject to the Act and we will consider your claimed exception to disclosure.

The city asserts the dates of birth in the responsive information are excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 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.² *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. Thus, the city must

²Section 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).

withhold all public citizens' dates of birth in the responsive information under section 552.101 of the Government Code in conjunction with common-law privacy.

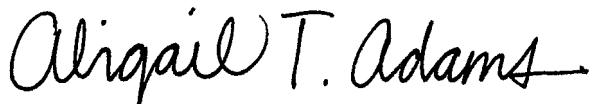
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.³ See Gov't Code § 552.130(a). Therefore, the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, to the extent the responsive information is maintained solely by the city's municipal court, we find the responsive information consists of records of the judiciary, and is thus, not subject to disclosure under the Act. To the extent the information at issue is maintained by the city's police department, the city must (1) withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the motor vehicle record information we have marked under section 552.130 of the Government Code; and (3) release the remaining responsive 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,



Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/akg

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but will not ordinarily raise other exceptions. Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 598089

Enc. Submitted documents

c: Requestor
(w/o enclosures)