



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 27, 2016

Ms. Julie Pandya Doshier  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Ross Tower  
500 North Akard  
Dallas, Texas 75201

OR2016-12122

Dear Ms. Doshier:

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# 614889 (Highland Reference No. 76412; 2016-084).

The City of Highland Village (the "city"), which you represent, received a request for all e-mails sent from a named individual to any city staff, city council members, and "ZBA" during a specified time period. You state the city released some information with redactions made pursuant to sections 552.130(c) and 552.136(c) of the Government Code.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under section 552.101 of the

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<sup>1</sup>You state the city redacted motor vehicle record information subject to section 552.130 of the Government Code and access device numbers subject to section 552.136 of the Government Code pursuant to Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold certain categories of information without requesting an attorney general decision. However, the Texas Legislature amended sections 552.130 and 552.136 to allow a governmental body to redact information described in sections 552.130(a) and 552.136(b) without a ruling from this office. *See* Gov't Code §§ 552.130(c), .136(c). If a governmental body redacts such information, it must notify the requestor of his right to appeal the redactions in accordance with sections 552.130(e) and 552.136(e). *See id.* §§ 552.130(e), .136(e). Open Records Decision No. 684 does not permit the requestor to appeal such redactions. Thus, the statutory amendments to sections 552.130 and 552.136 of the Government Code supercede Open Records Decision No. 684, and a governmental body may redact information subject to sections 552.130(a) and 552.136(b) in accordance with sections 552.130(c) and 552.136(c), not Open Records Decision No. 684.

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 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 the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). This office also has found some kinds of medical information are excepted from required public disclosure under common-law privacy. Open Records Decision No. 455 (1987). Additionally, 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>2</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 find the city must withhold the dates of birth you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find there is a legitimate public interest in the remaining information the city seeks to withhold. Accordingly, the city may not withhold any of the remaining information 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.

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<sup>2</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).

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 "Sean Nottingham".

Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/som

Ref: ID# 614889

Enc. Submitted documents

c: Requestor  
(w/o enclosures)