



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 27, 2016

Ms. Julie Pandya Doshier  
Counsel for the City of Highland Village  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Ross Tower  
500 North Akard Street  
Dallas, Texas 75201

OR2016-21791

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# 628385 (File Reference Numbers 77918 and 78177).

The City of Highland Village (the "city"), which you represent, received two requests from the same requestor for information pertaining to a specified incident. You state the city does not have information responsive to a portion of the requests.<sup>1</sup> You indicate the city will withhold information pursuant to section 552.136(c) of the Government Code.<sup>2</sup> You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>Section 552.136(c) of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See Gov't Code* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

We note the submitted information contains fingerprints, the public availability of which is governed by sections 560.001, 560.002, and 560.003 of the Government Code. Section 560.003 of the Government Code provides, “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” Gov’t Code § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Section 560.002 of the Government Code provides, however, “[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). In this instance, the requestor is the individual whose fingerprints are at issue. Thus, the requestor has a right of access to her fingerprints under section 560.002(1)(A). We note the general exceptions found in the Act, such as section 552.108 of the Government Code, cannot impinge on a statutory right of access to information. *See* Open Records Decision Nos. 613 at 4 (1993), 451 at 4 (1986). Therefore, the city must release the requestor’s fingerprints to her pursuant to section 560.002 of the Government Code.

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 information subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator’s accident report), .062 (officer’s accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity may release an accident report in accordance with subsections (c) and (c-1). *Id.* § 550.065(c), (c-1). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c).

The submitted information includes a CR-3 accident report form. Here, the requestor is a person listed under section 550.065(c). Accordingly, the city must release the accident report to the requestor pursuant to section 550.065(c) of the Transportation Code.

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

(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:

...

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

Gov't Code § 552.022(a)(17). The remaining information contains court-filed documents, which we have marked, that are subject to section 552.022(a)(17) and must be released unless they are made confidential under the Act or other law. *See id.* The city seeks to withhold the information subject to section 552.022(a)(17) under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the submitted court-filed documents may not be withheld under section 552.108 of the Government Code. As the city claims no other exception to the disclosure of the marked court-filed documents, they must be released.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information pertains to a pending criminal case. Based on your representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the information at issue.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes the identity and description of the complainant. *See* ORD 127. Thus, with the exception of basic information, including the identity and description of the complainant, the city may withhold the remaining information it marked under section 552.108(a)(1) of the Government Code.<sup>3</sup>

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. *See Open Records Decision No. 208 at 1-2 (1978)*. The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *Open Records Decision No. 279 at 1-2 (1981)* (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988)*. However, individuals who provide information in the course of an investigation are not informants for the purposes of claiming the informer's privilege. The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. *Open Records Decision No. 549 at 5 (1990)*.

You assert the information you marked identifies a complainant who reported a possible violation of criminal law to the city's police department. There is no indication the subject of the complaint knows the identity of the complainant. Based on your representations and our review, we conclude the information we marked identifies the complainant. Thus, the city may withhold the information we marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, we find the city has failed to demonstrate the remaining information at issue identifies this individual. Thus, we conclude the city may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Section 552.101 of the Government Code also 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.<sup>4</sup>

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<sup>4</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).

*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.

The city seeks to withhold some dates of birth under section 552.101 in conjunction with common-law privacy. We note the privacy interest of the individual who has been de-identified pursuant to section 552.101 of the Government Code in conjunction with the common-law informer's privilege is protected. Therefore, the city may not withhold the date of birth of the de-identified individual under section 552.101 of the Government Code in conjunction with common-law privacy. We note the information at issue may also include the date of birth of the requestor's spouse. Section 552.023(a) of the Government Code states that a person or a person's authorized representative has a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest. *See Gov't Code* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, the requestor may have a right of access to her spouse's date of birth if she is acting as her spouse's authorized representative. *See Gov't Code* § 552.023(a); ORD 481 at 4. Therefore, if the date of birth at issue belongs to the requestor's spouse and the requestor is acting as her spouse's authorized representative, then the city may not withhold this date of birth under section 552.101 in conjunction with common-law privacy. If the date of birth does not belong to the requestor's spouse or the requestor is not acting as her spouse's authorized representative, then the city must withhold this date of birth under section 552.101 in conjunction with common-law privacy. In any event, the city must withhold the information we marked that does not pertain to the requestor or her spouse under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>5</sup>

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. *See Gov't Code* § 552.130. We note section 552.130 protects privacy interests. Thus, as noted above, the requestor may be her spouse's authorized representative, and may have a right of access to information pertaining solely to him that would otherwise be confidential. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, if the information at issue belongs to the requestor's spouse and the requestor is acting as her spouse's authorized representative, then the city may not withhold any motor vehicle record

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<sup>5</sup>You ask this office to issue a previous determination permitting the city to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general opinion. *See Gov't Code* §552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). Please note the city may withhold public citizens' dates of birth without the necessity of requesting an attorney general decision pursuant to Open Records Letter No. 2016-21546 (2016).

information pertaining solely to the requestor's spouse from her under section 552.130. If the information at issue does not belong to the requestor's spouse or the requestor is not acting as her spouse's authorized representative, then the city must withhold this information that pertains solely to the individual at issue, which we have marked, under section 552.130. In any event, the city must withhold the motor vehicle record information pertaining to any other individual, which consists of the information you marked and the additional information we marked, under section 552.130 of the Government Code.

In summary, the city must release the requestor's fingerprints to her pursuant to section 560.002 of the Government Code. The city must release the accident report to the requestor pursuant to section 550.065(c) of the Transportation Code. The marked court-filed documents must be released pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, including the identity and description of the complainant, which must be released, the city may withhold the remaining information it marked under section 552.108(a)(1) of the Government Code. The city may withhold the information we marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. If the date of birth at issue belongs to the requestor's spouse and the requestor is acting as her spouse's authorized representative, then the city may not withhold this date of birth under section 552.101 in conjunction with common-law privacy. If the date of birth does not belong to the requestor's spouse or the requestor is not acting as her spouse's authorized representative, then the city must withhold this date of birth under section 552.101 in conjunction with common-law privacy. In any event, the city must withhold the information we marked that does not pertain to the requestor or her spouse under section 552.101 of the Government Code in conjunction with common-law privacy. If the information at issue belongs to the requestor's spouse and the requestor is acting as her spouse's authorized representative, then the city may not withhold any motor vehicle record information pertaining solely to the requestor's spouse from her under section 552.130 of the Government Code. If the information at issue does not belong to the requestor's spouse or the requestor is not acting as her spouse's authorized representative, then the city must withhold this information that pertains solely to the individual at issue, which we have marked, under section 552.130 of the Government Code. In any event, the city must withhold the marked motor vehicle record information that does not pertain to the requestor's spouse under section 552.130 of the Government Code. The city must release the remaining information to this requestor.<sup>6</sup>

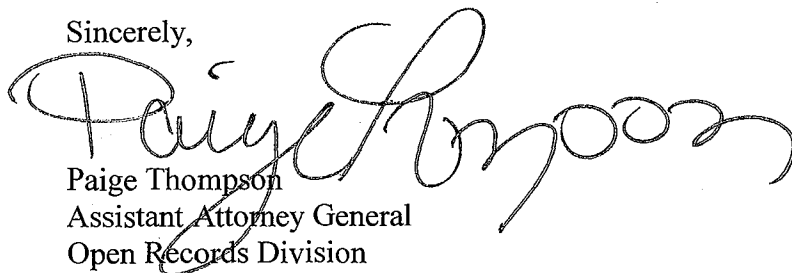
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<sup>6</sup>We note the requestor has a special right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates, or that party's representative, solely on grounds that information is considered confidential by privacy principles). Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, then the city should again seek a ruling from this office.

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 cursive script, appearing to read "Paige Thompson". The signature is written in black ink and is positioned above the typed name and title.

Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/dls

Ref: ID# 628385

Enc. Submitted documents

c: Requestor  
(w/o enclosures)