



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 1, 2016

Ms. Captoria Brown  
Senior Paralegal  
Office of the City Attorney  
City of Carrollton  
1945 East Jackson Road  
Carrollton, Texas 75006

OR2016-26597

Dear Ms. Brown:

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# 638389 (City ID# 8486).

The City of Carrollton (the "city") received a request for all records related to health inspections of a specified business. The city released information responsive to the request but made redactions as permitted by section 552.130 without requesting a decision from this office. *See* Gov't Code § 552.130(c). Pursuant to section 552.130(d), the requestor has asked this office to review the information and render a decision as to whether it is excepted from disclosure under section 552.130. *Id.* § 552.130(d). Additionally, you claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have also redacted dates of birth of members of the public. You do not assert, nor does a review of our records indicate, the city is authorized to withhold that information without seeking a ruling from this office. *See id.* § 552.301; Open Records Decision No. 673 (2001). Accordingly, the city was required to seek a ruling to withhold that information, and it did not meet the procedural deadlines under section 552.301(b) of the Government Code. *See* Gov't Code § 552.301(b). Nonetheless, because section 552.101 of the Government Code makes information confidential, and thus, provides a compelling

reason to withhold information from disclosure, so we will consider the applicability of that exception to the information at issue. *See id.* § 552.302.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. 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. *Indus. Found.*, 540 S.W.2d 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. Thus, the city must withhold the public citizen’s date of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator’s or driver’s license or permit and a motor vehicle title or registration issued by an agency of this state or another state or country. Gov’t Code § 552.130(a)(1), (2). Accordingly, the city must withhold the information you redacted under section 552.130 of the Government Code.

The requestor asserts a right of access to motor vehicle record information under chapter 730 of the Transportation Code. *See* Transp. Code § 730.007(a) (personal information obtained in connection with motor vehicle record may be disclosed under certain circumstances). Chapter 730 is applicable only to an “agency . . . that compiles or maintains motor vehicle records.” Transp. Code § 730.003(1). The city is not an agency as defined by section 730.003(1). Therefore, chapter 730 does not apply, and we conclude the requestor does not have a right of access to this information pursuant to chapter 730 of the Transportation Code.

In summary, the city must withhold the public citizen’s date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information you have marked under section 552.130 of the Government Code.

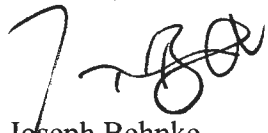
---

<sup>1</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 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 black ink, appearing to read 'J. Behnke', written over a horizontal line.

Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 638389

Enc. Submitted documents

c: Requestor  
(w/o enclosures)