December 29, 2016

Ms. Janet M. Spugnardi  
Deputy City Attorney  
City of Irving  
825 West Irving Boulevard  
Irving, Texas 75060

Dear Ms. Spugnardi:

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# 640702.

The City of Irving (the “city”) received a request for information pertaining to a specified incident, including other related incidents. The city states it will withhold information pursuant to section 552.130 of the Government Code and Open Records Decision No. 684 (2009).¹ The city also states it has made some of the requested information available to the requestor, but claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.²

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. Gov’t Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See id. § 552.130(d), (e). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of seeking a decision from this office.

²We 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 those records contain substantially different types of information than that submitted to this office.
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 section 826.021(a) of the Health and Safety Code reads as follows:

Information contained in a rabies vaccination certificate or in any record compiled from the information contained in one or more certificates that identifies or tends to identify an owner or an address, telephone number, or other personally identifying information of an owner of a vaccinated animal is confidential and not subject to disclosure under [the Act]. The information contained in the certificate or record may not include the social security number or the driver's license number of the owner of the vaccinated animal.

Health & Safety Code § 826.021(a). Section 826.0211 applies only to information contained in a rabies vaccination certificate or in a record compiled from information contained in one or more rabies vaccination certificates. The city states Exhibit C consists of a record from the city's pet database. The city further states the information it has marked in this record was compiled from a rabies vaccination certificate and identifies, or tends to identify, an owner or an address, telephone number, or other personally identifying information. Upon review, we agree the city must withhold the information it has marked in Exhibit C under section 552.101 of the Government Code in conjunction with section 826.0211(a) of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses section 826.0311 of the Health and Safety Code, which provides, in part, the following:

(a) Information that is contained in a municipal or county registry of dogs and cats under Section 826.031 that identifies or tends to identify the owner or an address, telephone number, or other personally identifying information of the owner of the registered dog or cat is confidential and not subject to disclosure under [the Act]. The information contained in the registry may not include the social security number or the driver's license number of the owner of the registered animal.

(b) The information may be disclosed only to a governmental entity or a person that, under a contract with a governmental entity, provides animal control services or animal registration services for the governmental entity for purposes related to the protection of public health and safety. A governmental entity or person that receives the information must maintain the confidentiality of the information, may not disclose the information under [the Act], and may not use the information for a purpose that does not directly relate to the protection of public health and safety.

Id. § 826.0311(a)-(b). Section 826.0311 applies only to the actual pet registry; it does not apply to the contents of other records, even though those documents may contain the same
information as the pet registry. See Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure). We note Exhibit D consists of a case view report. Although the city asserts some of the information in Exhibit D is confidential under section 826.0311, it has not explained, and the submitted documents do not reflect, this information consists of the actual pet registry for the city. Accordingly, the city may not withhold any of the information in Exhibit D under section 552.101 of the Government Code in conjunction with section 826.0311 of the Health and Safety Code.

Section 552.101 of the Government Code also 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). 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.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 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. We agree the city must withhold the date of birth it has marked under section 552.101 of the Government Code in conjunction with common-law privacy.

To conclude, the city must withhold the information it has marked in Exhibit C under section 552.101 of the Government Code in conjunction with section 826.0211(a) of the Health and Safety Code. The city must also withhold the date of birth it has marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release the remaining information.

Finally, the city asks 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. See Gov’t Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). After due consideration, we have decided to grant this request. Therefore, this letter ruling authorizes the city to withhold the dates of birth of

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3Section 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).
public citizens under section 552.101 of the Government Code in conjunction with common-law privacy. We note common-law privacy is a personal right that lapses at an individual’s death. See Moore v. Charles B. Pierce Film Enters., Inc., 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); see also Open Records Decision Nos. 620 (1993), 272 (1981), 192 (1978). Therefore, this previous determination authorizes the city to withhold dates of birth of living individuals. This previous determination is not applicable to dates of birth belonging to deceased individuals. We also note a person or a person’s authorized representative has a special right of access under section 552.023 of the Government Code to information that is protected from public disclosure by laws intended to protect the person’s privacy interests. See Gov’t Code § 552.023(a); ORD 481 at 4. Therefore, this previous determination is not applicable to dates of birth requested by a person or the authorized representative of a person whose date of birth is at issue. Furthermore, information filed with a court is not protected by common-law privacy. See Gov’t Code § 552.022(a)(17); Star-Telegram v. Walker, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Accordingly, this previous determination is not applicable to dates of birth contained in court-filed documents. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the city is not required to ask for a decision from this office again with respect to this type of information. See ORD 673 at 7-8 (listing elements of second type of previous determination under Gov’t Code § 552.301(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, 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,

[Signature]

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 640702

Enc. Submitted documents

c: Requestor
(w/o enclosures)