May 8, 2017

Ms. Lisa Ruiz  
Paralegal  
Office of the City Attorney  
City of Dallas  
1500 Marilla Street, Room 7DN  
Dallas, Texas 75201

Dear Ms. Ruiz:

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# 656589 (ORR# C001069).

The City of Dallas (the “city”) received a request for information related to a named employee of the city, including records related to crashes he was involved in and his current employment status.\(^1\) The city states it will redact the originating address of a 9-1-1 caller pursuant to the previous determinations issued in Open Records Letter No. 2011-18466 (2011).\(^2\) The city states it will release some of the requested information. The city claims

\(^1\)You state the city sought and received clarification of the information requested. See Gov’t Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also City of Dallas v. Abbott, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

\(^2\)Open Records Letter No. 2011-18466 is a previous determination issued to the city authorizing it to withhold, under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code, an originating address of a 9-1-1 caller furnished by a service supplier established in accordance with chapter 772 of the Health and Safety Code without the necessity of requesting an attorney general decision.
the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions the city claims and reviewed the submitted representative sample of information.³

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. See 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 shall 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).

In this instance, the requestor is not a person listed under section 550.065(c). Thus, the accident report submitted as Exhibit C is confidential under section 550.065(b), and the city must withhold it under section 552.101 of the Government Code. However, section 550.065(c-1) requires the city to create a redacted accident report that may be requested by any person. Id. § 550.065(c-1). The redacted accident report may not include the information listed in subsection (f)(2). Id. Thus, the city must release the redacted accident report pursuant to section 550.065(c-1) of the Transportation Code.

Section 552.102(a) of the Government Code 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). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex., 354 S.W.3d 336 (Tex. 2010). Accordingly, the city must withhold the employee’s date of birth it marked under section 552.102(a) of the Government 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

³We 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.
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 a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See*, e.g., Open Records Decision Nos. 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). The Third Court of Appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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.). Thus, the city must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we agree the information the city highlighted in blue and orange satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the information it highlighted in blue and orange under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov’t Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, if the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information it marked under section 552.117(a)(1) of the Government Code. Conversely, if the individual at issue did not timely request confidentiality under section 552.024, the city may not withhold the marked information under section 552.117(a)(1).

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. Accordingly, the city must
withhold the motor vehicle record information it marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Id. § 552.136(b); see id. § 552.136(a) (defining “access device”). You state the employee identification number you have marked is used in conjunction with one additional digit to access city credit union bank accounts. This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. We therefore conclude the city must withhold the employee identification number it highlighted in green and the insurance policy number it highlighted in pink under section 552.136 of the Government Code.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. Gov’t Code § 552.147(a). Accordingly, the city may withhold the social security number it marked under section 552.147 of the Government Code.

In summary, the city must withhold the accident report submitted as Exhibit C under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code but must release the redacted accident report pursuant to section 550.065(c-1) of the Transportation Code. The city must withhold the employee’s date of birth it marked under section 552.102(a) of the Government Code. The city must withhold the information it highlighted in blue and orange under section 552.101 of the Government Code in conjunction with common-law privacy. If the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information it marked under section 552.117(a)(1) of the Government Code. The city must withhold the motor vehicle record information it marked under section 552.130 of the Government Code. The city must withhold the employee identification number it highlighted in green and the insurance policy number it highlighted in pink under section 552.136 of the Government Code. The city may withhold the social security number it marked under section 552.147 of the Government Code. The city must release the remaining information.

Finally, the city asks this office to issue a previous determination permitting the city to withhold (1) dates of birth of current and former employees of the city under section 552.102(a) of the Government Code when the dates of birth are held in an employment context and (2) 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 the city’s request on this matter. Therefore, this letter ruling authorizes the city to withhold the dates of birth of current and former city employees under section 552.102(a) of the
Government Code when the dates of birth are held in an employment context. This letter ruling also authorizes the city to withhold the dates of birth of 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 only 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); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). 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 does not authorize the city to withhold under section 552.101 of the Government Code in conjunction with common-law privacy 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 need not 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,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som
Ref: ID# 656589

c: Requestor