



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 12, 2017

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P. O. Box 839966
San Antonio, Texas 78207

OR2017-10295

Dear Mr. Kopp:

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# 658419 (COSA File No. W152699).

The City of San Antonio (the "city") received a request for a specified incident report. The city released information responsive to the request but made redactions as permitted by section 552.136 of the Government Code without requesting a decision from this office.¹ *See* Gov't Code § 552.136(c). Pursuant to section 552.136(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 552.136(b) of the Government Code. *See id.* § 552.136(d). We have considered the city's position and reviewed the information.

¹The city also redacted a date of birth of a member of the public in accordance with a previous determination issued to the city in Open Records Letter No. 2016-08566 (2016), which authorizes the city to redact that type of information without a ruling from this office. Subsequently, the city determined the requestor has a right of access to the date of birth at issue, and no longer seeks to withhold information under section 552.101 of the Government Code in conjunction with common-law privacy. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves).

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”² Gov’t Code § 552.101. Section 552.101 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. The court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *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.). However, as you acknowledge, the requestor is an authorized representative of one the individuals whose information is at issue and has a right of access to that individual’s date of birth pursuant to section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a); ORD 481. Thus, with the exception of the date of birth of the individual for whom the requestor is an authorized representative, the city must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of this chapter, 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.” Gov’t Code § 552.136(b). The city asserts the submitted employee SAP numbers are confidential under section 552.136 because they can be used by employees to obtain certain goods, such as gasoline. Based on these representations, we agree this information constitutes access device numbers for purposes of section 552.136. Accordingly, the city must continue to withhold the employee SAP numbers in the information at issue under section 552.136 of the Government Code.

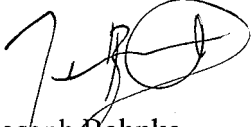
In summary, with the exception of the date of birth of the individual for whom the requestor is an authorized representative, the city must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The city must continue to withhold the employee SAP numbers in the information at issue under section 552.136 of the Government Code.

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.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480(1987), 470 (1987).

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,

A handwritten signature in black ink, appearing to read 'J. Behnke', with a large circular flourish at the end.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/tdw

Ref: ID# 658419

Enc. Submitted documents

c: Requestor
(w/o enclosures)