



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 29, 2017

Ms. Erin Higginbotham  
Counsel for City of Westlake Hills  
Bojorquez Law Firm, PLLC  
12325 Hymeadow Drive, Suite 2-100  
Austin, Texas 78750

OR2017-14520

Dear Ms. Higginbotham:

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# 665396.

The City of West Lake Hills (the "city"), which you represent, received requests from different requestors for information pertaining to a specified investigation. The city claims 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 claimed exceptions and reviewed the submitted information.

Initially, we must address the procedural obligations of the city under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). The city informs us it received the requests for information on April 24, 2017. Thus, the city's fifteen-business-day deadline under section 552.301(e) was May 15, 2017. However, the city

submitted the information required by section 552.301(e) to this office by electronic submission on May 23, 2017. *See id.* § 552.309(a); 1 T.A.C. § 63.22(a). Therefore, we find the city failed to comply with the procedural requirements mandated by section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). We find the city has failed to establish a compelling reason to address its claim under section 552.108 of the Government Code. Nevertheless, because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome this presumption, we will consider the city's arguments under these sections.

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 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 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.). Upon review, we find some of the submitted information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must generally withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we conclude the remaining information is not confidential under common-law privacy, and the city may not withhold it under section 552.101 on that ground.

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. The city must generally withhold the motor vehicle record information it has marked under section 552.130 of the Government Code.

However, we note the information at issue pertains to one of the requestors. Section 552.023 of the Government Code provides a governmental body may not deny access to a person or a person's representative to whom the information relates on the grounds that the information is considered confidential under privacy principles. *Id.* § 552.023(a). Thus, the city must

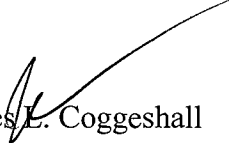
release the submitted information in its entirety to the requestor whose information is at issue.

To conclude, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the information it has marked under section 552.130 of the Government Code; however, the city must release this information to the requestor whose information is at issue. The city must release the remaining information.

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,



James E. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/bw

Ref: ID# 665396

Enc. Submitted documents

c: 3 Requestors  
(w/o enclosures)