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ATTORNEY GENERAL OF TEXAS

January 9, 2018

Mr. Ryan D. Pittman
Counsel for the City of Frisco
Abernathy, Roeder, Boyd, Hullett
P. O. Box 1210
McKinney, Texas 75069-1210

OR2018-00654

Dear Mr. Pittman:

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# 690751 (ORR G022365-101217).

The City of Frisco (the "city"), which you represent, received a request for information pertaining to a specified utility account. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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. This section encompasses section 182.052 of the Utilities Code, which provides in relevant part the following:

- (a) Except as provided by Section 182.054, a government-operated utility may not disclose personal information in a customer's account record, or any information relating to the volume or units of utility usage or the amounts billed to or collected from the individual for utility usage, if the customer requests that the government-operated utility keep the information confidential. However, a government-operated utility may disclose information related to the customer's volume or units of utility usage or amounts billed to or collected from the individual for utility usage if the primary source of water for such utility was a sole-source designated aquifer.

(b) A customer may request confidentiality by delivering to the government-operated utility an appropriately marked form provided under Subsection (c)(3) or any other written request for confidentiality.

Util. Code § 182.052(a)-(b). The scope of utility services covered by section 182.052 includes water, wastewater, sewer, gas, garbage, electricity, or drainage service. *Id.* § 182.051(3). “Personal information” under section 182.052(a) means an individual’s address, telephone number, or social security number, but does not include an individual’s name. *See id.* § 182.051(4); *see also* Open Records Decision No. 625 (1994) (construing statutory predecessor).

The submitted information contains personal information in the requestor’s account record. Section 182.052(b) provides the means by which a customer may request confidentiality for his or her personal information, certain utility usage information, and information relating to the amounts billed to or collected from the customer for utility usage. *See id.* § 182.052(a), (b). Section 182.052(d) of the Utilities Code states “[a] customer may rescind a request for confidentiality by providing the government-operated utility written permission to disclose personal information.” *Id.* § 182.052(d). It is implicit from the language of this section that the city is not prohibited from releasing the customer’s own personal information if the customer provides permission to do so. *See id.*; *see also id.* § 182.054(5) (personal information may be released to person for whom the customer has contractually waived confidentiality for personal information). As the requestor’s written request encompasses the requestor’s personal information, we conclude the requestor has provided written permission for the city to disclose the requestor’s personal information in this situation. Thus, because the city has permission to do so, it may not withhold the requestor’s personal information under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code.

Section 552.101 of the Government Code also 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.). Upon review, the submitted information contains the date of birth of the requestor’s spouse. Thus, the requestor may be the authorized representative of that individual, and may have a right of access to information pertaining to his spouse that would otherwise be confidential under common-law privacy. *See* Gov’t Code § 552.023(a) (“person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, if the requestor is acting as the authorized representative of his spouse, then the city may not withhold this information from this requestor under section 552.101 on the basis

of common-law privacy. If the requestor is not acting as the authorized representative of his spouse, the city must withhold the date of birth at issue under section 552.101 in conjunction with common-law privacy.

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.¹ *See* Gov't Code § 552.130. We note section 552.130 protects personal privacy. Thus, as noted above, the requestor may be his spouse's authorized representative, and may have a right of access to information pertaining solely to her that would otherwise be confidential. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, if the requestor is acting as his spouse's authorized representative, then the city may not withhold any motor vehicle record information pertaining solely to the requestor's spouse from him under section 552.130. If the requestor is not acting as his spouse's authorized representative, then the city must withhold this information that pertains solely to the individual at issue under section 552.130.

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). However, section 552.136 protects personal privacy. Thus, the requestor has a right of access to the submitted account number pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, the city must release the account number to the requestor.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). As noted above, the requestor is the spouse of the individual whose e-mail address is at issue, and may be acting as her authorized representative. *See id.* Accordingly, if the requestor is his spouse's authorized representative, then he has a right of access to her e-mail address, and that information may not be withheld from this requestor under section 552.137 of the Government Code. However, if the requestor is not acting as his spouse's representative, the city must withhold her e-mail address, which we marked, under section 552.137 of the Government Code, unless the requestor's spouse affirmatively consents to its public disclosure.

In summary, if the requestor is not acting as his spouse's authorized representative, then the city must withhold (1) her date of birth under section 552.101 of the Government Code in

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

conjunction with common-law privacy; (2) the motor vehicle record pertaining to the requestor's spouse, which we marked, under section 552.130 of the Government Code and (3) her e-mail address, which we marked, under section 552.137 of the Government Code, unless the requestor's spouse affirmatively consents to its public disclosure. In either event, the city must release the remaining information.²

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, 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,



D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/gw

Ref: ID# 690751

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a special right of access to some of the information being released in this instance. We also note the remaining information contains the requestor's spouse's social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b). The requestor has a right, however, to his spouse's social security number if he is acting as his spouse's authorized representative, the city may not withhold this information from this requestor. *See generally id.* § 552.023(a); ORD 481 at 4.