January 24, 2018

Ms. Andrea D. Russell  
Counsel for City of Weatherford  
Taylor Olson Adkins Sralla Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107-4654

Dear Ms. Russell:

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# 693346.

The City of Weatherford (the “city”), which you represent, received a request for a specified case. You indicate the city will withhold certain information under sections 552.130(c) and 552.147(b) of the Government Code. Further, you state, pursuant to the previous determination in Open Records Decision No. 684 (2009), you will redact certain information. 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.

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. See 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). 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 requesting a decision from this office under the Act. Id. § 552.147(b).

2Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.
Section 552.101 of the Government Code excepts "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, 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). 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. We note the public has a legitimate interest in knowing the general details of a crime. See generally Lowe v. Hearst Commc'ns, Inc., 487 F.3d 246, 250 (5th Cir. 2007) (noting a "legitimate public interest in facts tending to support an allegation of criminal activity" (citing Cine! v. Connick, 15 F.3d 1338, 1345-46 (5th Cir. 1994)); Houston Chronicle Publ'g Co. v. City of Houston, 531 S.W.2d 177, 186-87 (public has legitimate interest in details of crime and police efforts to combat crime in community). However, 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.). 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. However, we find none of the remaining information is highly intimate or embarrassing information and of no legitimate public interest, and it may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Thus, the city must release the remaining information.

You ask 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 without requesting a ruling from this office. 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 your request on this matter. Therefore, this letter ruling 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 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
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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, Inc. V. Walker, 834 S.W.2d 54, 57 (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 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,

Paige Thompson
Assistant Attorney General
Open Records Division

PT/eb

Ref: ID# 693346

Enc. Submitted documents

c: Requestor
(w/o enclosures)