June 26, 2018

Ms. Judith Benton
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

Dear Ms. Benton:

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# 715634 (Reference No. LGL-18-112).

The City of Waco (the “city”) received a request for a specified incident report. You state the city has released some information. We understand the city is relying on the previous determination issued in Open Records No. 2018-06462 (2018) to withhold some of the requested information under 552.108(a)(1) of the Government Code. You state you will redact information pursuant to section 552.147(b) of the Government Code. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions 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. 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.

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1Section 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. See Gov’t Code § 552.147(b).
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.). We note the requestor has a right of access to information pertaining to herself that would otherwise be confidential under common-law privacy. *See* Gov’t Code § 552.023(a) (“a person or person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to a 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 herself). Thus, the city may not withhold the requestor’s own information under section 552.101 on the basis of common-law privacy. Additionally, the requestor may be the legal guardian of the minor child whose information is at issue. Therefore, we rule conditionally. If the requestor is the legal guardian of the minor child whose information is at issue, with the exception of the dates of birth of the requestor and the minor child, 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, if the requestor is not the legal guardian of the minor child whose information is at issue, with the exception of the date of birth of the requestor, 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 552.130 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. Gov’t Code § 552.130. Accordingly, the city must withhold the motor vehicle record information you have marked and the additional information we have marked under section 552.130 of the Government Code.

In summary, if the requestor is the legal guardian of the minor child whose information is at issue, with the exception of the dates of birth of the requestor and the minor child, 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, if the requestor is not the legal guardian of the minor child whose information is at issue, with the exception of the date of birth of the requestor, 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 withhold the motor vehicle record information you have marked and the additional information we have marked under section 552.130 of the Government Code. The city must release the remaining information.

Finally, 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. *See* id. § 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); ORD 481 at 4. 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 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](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,

[Signature]

Jahnna Ward
Assistant Attorney General
Open Records Division

JW/mo

Ref: ID# 715634

Enc. Submitted documents

c: Requestor (w/o enclosures)