



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 11, 2019

Mr. Eric C. Farrar  
Counsel for the City of Dickinson  
Olson & Olson LLP  
2727 Allen Parkway, Suite 600  
Houston, Texas 77019-2133

OR2019-06676

Dear Mr. Farrar:

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# 761602 (Ref No. COD19-006).

The City of Dickinson (the "city"), which you represent, received a request for information pertaining to a specified incident. You state the city will redact information pursuant to sections 552.130(c) and 552.147(b) of the Government Code and Open Records Decision No. 684 (2009).<sup>1</sup> 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.

The city asserts the dates of birth are excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 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

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<sup>1</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 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 the social security number of a living person without the necessity of requesting a decision from this office under the Act. *See id.* § 552.147(b). Open 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.

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.). Thus, the city must withhold the dates of birth it marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 also encompasses section 560.003 of the Government Code, which provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *See* Gov’t Code § 560.003; *see also id.* §§ 560.001(1) (defining “biometric identifier” to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless individual consents to disclosure). Upon review, we find the submitted fingerprint constitutes a biometric identifier for purposes of section 560.003 of the Government Code. Thus, the city must withhold the submitted fingerprint under section 552.101 in conjunction with section 560.003 of the Government Code.

In summary, the city must withhold the dates of birth it marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the submitted fingerprint under section 552.101 in conjunction with section 560.003 of the Government Code. 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,



Jesse Harvey  
Assistant Attorney General  
Open Records Division

JH/mo

Ref: ID# 761602

Enc. Submitted documents

c: Requestor  
(w/o enclosures)