



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 8, 2019

Ms. LeAnn M. Quinn  
City Secretary  
City of Cedar Park  
450 Cypress Creek Road  
Cedar Park, Texas 78613

OR2019-18380

Dear Ms. Quinn:

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# 782024 (Reference No. 19-1114).

The Cedar Park Police Department (the "department") received a request for information pertaining to a specified case. You state the department will release some information. You also state the department will redact information pursuant to section 552.130(c) of the Government Code.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply

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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 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).

to information requested). You state the information in Exhibit C pertains to a closed criminal investigation that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to Exhibit C. Accordingly, the department may withhold Exhibit C under section 552.108(a)(2) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 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 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.). Accordingly, the department must withhold the public citizen’s date of birth you marked in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note the information at issue also includes the requestor’s spouse’s date of birth. Section 552.023(a) of the Government Code states that a person or a person’s authorized representative has a special right of access to information that is excepted from public disclosure under laws intended to protect that person’s privacy interest. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, the requestor has a right of access to her spouse’s date of birth if she is acting as the authorized representative of her spouse. *See* Gov’t Code § 552.023(a); ORD 481 at 4. Therefore, if the requestor is acting as the authorized representative of her spouse, then the department may not withhold the requestor’s spouse’s date of birth, which we marked, under section 552.101 in conjunction with common-law privacy. However, if the requestor is not acting as the authorized representative of her spouse, then the department must also withhold the date of birth we marked under section 552.101 in conjunction with common-law privacy.

In summary, the department may withhold Exhibit C under section 552.108(a)(2) of the Government Code. The department must withhold the public citizen’s date of birth you marked, and, if the requestor is not acting as the authorized representative of her spouse, the date of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information.<sup>2</sup>

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<sup>2</sup>We note the requestor has a right of access to the basic information being released pursuant to section 261.201(k) of the Family Code. *See* Fam. Code § 261.201(k); Gov’t Code § 552.023; ORD 481 at 4. If the department receives another request for this information from a different requestor, the department must again seek a ruling from this office. *See* Gov’t Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

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,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/mo

Ref: ID# 782024

Enc. Submitted documents

c: Requestor  
(w/o enclosures)