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ATTORNEY GENERAL OF TEXAS

August 16, 2019

Mr. Laurence E. Boyd
Counsel for the City of Iowa Colony
Laurence E. Boyd Attorney at Law
P.O. Box 269
Angleton, Texas 77516-0269

OR2019-22816

Dear Mr. Boyd:

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# 781813.

The City of Iowa Colony (the "city"), which you represent, received a request for information pertaining to the requestor. The city indicates it will withhold information pursuant to section 552.130(c) of the Government Code and Open Records Decision No. 684 (2009).¹ The city states it has released some of the requested information, but claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.1175 of the Government Code. We have considered the claimed exceptions 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

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). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of seeking a decision from this office.

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 Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. See *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.). Nevertheless, because “the right of privacy is purely personal[.]” that right “terminates upon the death of the person whose privacy is invaded[.]” *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 *Justice v. Belo Broad. Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded” (quoting Restatement (Second) of Torts § 6521 (1977))); Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 (1981) (“the right of privacy is personal and lapses upon death”). Accordingly, the city must withhold the dates of birth of living individuals it has marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the city may not withhold the date of birth of a deceased individual on that ground.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. See Gov't Code § 552.1175. The city must withhold the information it has marked under section 552.1175 if the individuals at issue are licensed peace officers and elect to restrict access to this information in accordance with section 552.1175(b) of the Government Code. The city may not withhold this information under section 552.1175 if the individuals either are not currently licensed peace officers or do not elect to restrict access to this information in accordance with section 552.1175(b).

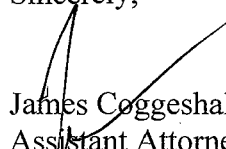
In summary, the city must withhold the dates of birth of living individuals it has marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold the information it has marked under section 552.1175 if the individuals at issue are licensed peace officers and elect to restrict access to this information in accordance with section 552.1175(b) of the Government Code. 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.

²Because the requestor has a special right of access to some of the information being released, the city must again seek a decision from this office if it receives another request for the same information from another requestor.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



James Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 781813

Enc. Submitted documents

c: Requestor
(w/o enclosures)