



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 17, 2019

Mr. Ron G. MacFarlane, Jr.
Counsel for the City of Cedar Hill
The MacFarlane Firm
400 East Royal Lane, Suite 290
Irving, Texas 75039

OR2019-26016

Dear Mr. MacFarlane:

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# 786132.

The City of Cedar Hill (the "city"), which you represent, received a request for a specified customer confidentiality election form. You claim portions of the submitted information are exempted 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 "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by section 182.052 of the Utilities Code, which provides, in part:

- (a) Except as provided by Section 182.054, a government-operated utility may not disclose personal information in a customer's account record, or any information relating to the volume or units of utility usage or the amounts billed to or collected from the individual for utility usage, if the customer requests that the government-operated utility keep the information confidential. However, a government-operated utility may disclose information related to the customer's volume or units of utility usage or amounts billed to or collected from the individual for utility usage if the

primary source of water for such utility was a sole-source designated aquifer.

(b) A customer may request confidentiality by delivering to the government-operated utility an appropriately marked form provided under Subsection (c)(3) or any other written request for confidentiality.

Util. Code § 182.052(a)-(b). “Personal information” under section 182.052(a) means an individual’s address, telephone number, or social security number, but does not include the individual’s name. *See id.* § 182.051(4); *see also* Open Records Decision No. 625 (1994) (construing statutory predecessor). Water, wastewater, sewer, gas, garbage, electricity, and drainage services are included in the scope of utility services covered by section 182.052. Util. Code § 182.051(3). A customer’s request for confidentiality must precede the utility’s receipt of the request for information. ORD 625 at 6.

Upon review, we find the information you have marked is subject to section 182.052(a) of the Utilities Code. You state, and the submitted information demonstrates, the individual whose information is at issue is a utility customer and timely requested confidentiality under section 182.052. There is no indication the exceptions listed in section 182.054 apply. Accordingly, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code.

Section 552.101 of the Government Code also 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.). Thus, the city must withhold the public citizen’s date of birth you have marked 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. *See* Gov’t Code § 552.130. Accordingly, the city must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

In summary, the city must: (1) withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code; (2) withhold the public citizen’s date of birth you have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) withhold the motor

vehicle record information you have marked under section 552.130 of the Government Code; and (4) 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 <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,

A handwritten signature in black ink, appearing to read 'Tim Neal', written in a cursive style.

Tim Neal
Assistant Attorney General
Open Records Division

TN/jxd

Ref: ID# 786132

Enc. Submitted documents

c: Requestor
(w/o enclosures)