



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 12, 2019

Ms. Brittaney N. Davis  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, Third Floor  
Fort Worth, Texas 76102-6311

OR2019-31766

Dear Ms. Davis:

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# 796076 (Request No. W089768).

The City of Fort Worth (the "city") received a request for information pertaining to a specified incident. You state the city will release some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the city's obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). You state the city received the instant request on August 21, 2019. You state the city was closed on September 2, 2019. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Thus, the city's ten-business-day deadline under section 552.301(b) for this request was September 5, 2019. You did not submit the information required by section 552.301(b) to this office until September 6, 2019. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail and common or contract carrier). Consequently, we

find you failed to comply with the requirements of section 552.301 of the Government Code with respect to your claim under section 552.108 for the submitted information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 82 (Tex. App.—Austin 1990, no writ). Although you assert section 552.108 for the submitted information, we find you failed to establish a compelling reason to address this exception. Accordingly, the city may not withhold any portion of the submitted under section 552.108 of the Government Code. However, section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness.<sup>1</sup> Therefore, we will address the applicability of this section to 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 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 his own date of birth. *See* Gov't Code § 552.023(a) (“person or a person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to 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, with the exception of the requestor's date of birth, 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 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.

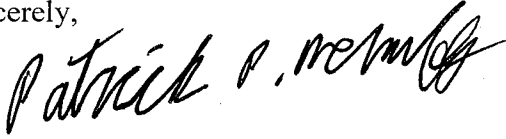
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and

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<sup>1</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 that reads "Patrick P. Mehaffy". The signature is written in a cursive style with a large initial "P".

Patrick P. Mehaffy  
Assistant Attorney General  
Open Records Division

PPM/rm

Ref: ID# 796076

Enc. Submitted documents

c: Requestor  
(w/o enclosures)