



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 18, 2019

Mr. Robert Carroll  
Senior Assistant City Attorney  
City of Odessa  
P.O. Box 4398  
Odessa, Texas 79760-4398

OR2019-32458

Dear Mr. Carroll:

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# 804094 (ORR# P000895).

The City of Odessa (the "city") received a request for police report number 190029982. The city states it is releasing some of the requested information. The city claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.<sup>1</sup> We have considered the exception the city claims 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 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.). Thus,

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<sup>1</sup> The city acknowledges it did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, because the exceptions the city claims can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

the city must generally withhold the public citizen's date of birth we 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 generally withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In this instance, however, the submitted information reveals the requestor is the spouse of the individual whose privacy interests are at issue. Thus, the requestor may be the authorized representative of that individual, and may have a right of access to information pertaining to the individual that would otherwise be confidential under common-law privacy. *See* Gov't Code § 552.023(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 himself). We note section 552.130 protects personal privacy. Accordingly, if the requestor is acting as the authorized representative of the individual, then the city may not withhold any portion of the marked information from this requestor under section 552.101 on the basis of common-law privacy or section 552.130.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. Gov't Code § 552.147(a). The city states it is withholding social security numbers pursuant to section 552.147(b) of the Government Code.<sup>2</sup> In this instance, however, the social security number contained in the submitted information belongs to the requestor. We note section 552.147 is based on privacy principles. *See id.* § 552.023(a). Thus, the requestor's own social security number may not be withheld from her under section 552.147.

In summary, the city must generally withhold the public citizen's date of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy and must generally withhold the motor vehicle record information we marked under section 552.130 of the Government Code; however, if the requestor is acting as the authorized representative of the individual, then the city may not withhold any portion of the marked

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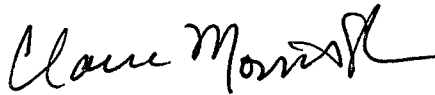
<sup>2</sup> Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

information from this requestor under section 552.101 on the basis of common-law privacy or section 552.130. The city must release the remaining information to this requestor.<sup>3</sup>

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/eb

Ref: ID# 804094

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup> We note the requestor has a right of access to some of the information being released. See Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the city receives another request for the same information from a different requestor, the city must again seek a decision from this office.