



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 26, 2020

Mr. James Kopp  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78207

OR2020-14538

Dear Mr. Kopp:

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# 829906 (COSA File No. W309481).

The City of San Antonio (the "city") received a request for information related to a specified motor vehicle accident. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108 [.]

Gov't Code § 552.022(a)(1). The submitted information is part of a completed investigation subject to section 552.022(a)(1). The city must release the completed investigation pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* Although you raise section 552.103 of the Government Code for the

information at issue, this section is a discretionary exception to disclosure and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, none of the information at issue may be withheld under section 552.103. However, we note sections 552.101 and 552.130 of the Government Code make information confidential under the Act.<sup>1</sup> Accordingly, we will consider the applicability of these exceptions to the submitted information.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This section 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. *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.). However, we note the requestor has a right of access to her client's date of birth, and this information may not be withheld from her under common-law privacy. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests); ORD 481 at 4 (privacy theories not implicated when individuals request information concerning themselves). Accordingly, with the exception of the date of birth belonging to the requestor's client, the city must withhold the public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 excepts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See* Gov't Code § 552.130. We note, because section 552.130 protects privacy interests, the requestor has a right of access to her client's motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, with the exception of the information pertaining to the requestor's client, the city must withhold the information we have marked, all visible license plates, and all visible motor vehicle registration stickers in the remaining information under section 552.130 of the Government Code.

In summary, with the exception of the date of birth belonging to the requestor's client, the city must withhold the public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the

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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).

information pertaining to the requestor's client, the city must withhold the information we have marked, all visible license plates, and all visible motor vehicle registration stickers in the remaining information under section 552.130 of the Government Code. The city must release the remaining information to this requestor.<sup>2</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,

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/jxd

Ref: ID# 829906

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup> As noted above, the requestor has a special right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the city receives another request for this information from an individual without such a right of access, we note 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 553.130(e). *See id.* § 552.130(d), (e). Further, we note Open Records Letter No. 2016-08566 (2016) authorizes the city to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.