



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 16, 2020

Mr. Laurence E. Boyd
Counsel for the City of Oyster Creek
P.O. Box 269
Angleton, Texas 77516-0269

OR2020-26178

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# 850509.

The City of Oyster Creek (the "city"), which you represent, received a request for a specified incident report. The city claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

The city informs us it asked the requestor to clarify some of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified). The city states it has not received a response to the request for clarification. Therefore, the city is not required to release any responsive information for which it sought clarification. But if the requestor responds to the clarification request, the city must seek a ruling from this office before withholding any responsive information from the requestor. *See* Gov't Code § 552.222; *City of Dallas*, 304 S.W.3d at 387.

Next, we note the city has redacted information pursuant to section 552.130(c) of the Government Code.¹ However, the city has also redacted a telephone number. The city does not assert, nor does our review of our records indicate, it has been authorized to

¹ 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 552.130(e). *See id.* § 552.130(d), (e).

withhold such information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2000). Because we can discern the nature of the information that has been redacted, being deprived of it does not inhibit our ability to make a ruling in this instance. Nevertheless, be advised a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering that the redacted information be released. *See* Gov't Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested"), .302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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.). The requestor has a right of access to his own date of birth pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Nevertheless, the city must withhold the remaining dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release the remaining information, including the redacted telephone number.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.

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 L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/rm

² Because 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.

Ref: ID# 850509

Enc. Submitted documents

c: Requestor
(w/o enclosures)