



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 5, 2020

Ms. Marcialyn Hooper  
Open Records Coordinator  
Dallas Animal Services  
1818 North Westmoreland Road  
Dallas, Texas 75212

OR2020-27876

Dear Ms. Hooper:

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# 853033 (ORR# C006054).

The City of Dallas (the "city") received a request for information pertaining to a specified incident.<sup>1</sup> The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>2</sup> We have considered the claimed exception and reviewed the submitted information.

Initially, we must address the procedural obligations of the city under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving a request for information a copy of the written request for information. *See* Gov't Code § 552.301(e)(1)(B). The city indicates it received

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<sup>1</sup> As the city has not submitted a copy of the request for information, we take our description from its brief.

<sup>2</sup> We note the city also claims the informer's privilege under Texas Rule of Evidence 508. The Texas Supreme Court has held the Texas Rules of Evidence are "other law" within the meaning of section 552.022 of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001); *see also* Gov't Code §552.022(a). Section 552.022 is not applicable to the submitted information and, therefore, we do not address the city's argument under rule 508.

the request for information on August 25, 2020. However, as of the date of this ruling, the city has not submitted to this office a copy of the request. Therefore, the city failed to comply with section 552.301(e).

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). Because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these sections to the information at issue.<sup>3</sup> However, we find the city has failed to establish a compelling reason to address the informer's privilege.

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. The city claims the information is protected by the informer's privilege pursuant to judicial decision and cites to *Scher v. United States*, 305 U.S. 251 (1938). However, we find this case does not determine the confidentiality of any information for purposes of the Act. Therefore, none of the information at issue may be withheld under section 552.101 of the Government Code in conjunction with *Scher v. United States*.

Section 552.101 of the Government Code 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 city must withhold the submitted dates of birth 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. The city must withhold the submitted driver's license number and issuing state under section 552.130 of the Government Code.

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<sup>3</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

In summary, the city must withhold the submitted dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold the submitted driver's license number and issuing state under section 552.130 of the Government Code. 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 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

Ref: ID# 853033

Enc. Submitted documents

c: Requestor  
(w/o enclosures)