February 8, 2022

Ms. Stacie S. White  
Counsel for the City of Benbrook  
Taylor, Olson, Adkins, Srrlla & Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107  

Dear Ms. White:

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# 930433.

The Benbrook Police Department (the “department”), which you represent, received a request for records related to a specified incident involving a named individual. The department states it is withholding motor vehicle record information pursuant to section 552.130(c) of the Government Code and social security numbers pursuant to section 552.147(b) of the Government Code.¹ The department also states it is withholding certain information pursuant to Open Records Decision No. 684 (2009).² The department claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the department claims and reviewed the submitted information.

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). 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 id. § 552.147(b).

² Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information without the necessity of requesting an attorney general decision.
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, the department must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

Finally, the department asks this office to issue a previous determination permitting the department to withhold public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. *See Gov’t Code § 552.301(a)* (allowing governmental body to withhold information subject to previous determination); *Open Records Decision No. 673* (2001). After due consideration, we have decided to grant the department’s request on this matter. Therefore, this letter ruling authorizes the department 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 an attorney general’s opinion. We note common-law privacy is a personal right that lapses at an individual’s death. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); *see also* *Open Records Decision Nos. 620* (1993), 272 (1981), 192 (1978). Thus, this previous determination authorizes the department to withhold dates of birth of living individuals. This previous determination is not applicable to dates of birth belonging to deceased individuals. We also note a person or a person’s authorized representative has a special right of access under section 552.023 of the Government Code to information that is protected from public disclosure by laws intended to protect the person’s privacy interests. *See Gov’t Code § 552.023(a); Open Records Decision No. 481* at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Consequently, this previous determination is not applicable to dates of birth requested by a person or by the authorized representative of a person whose date of birth is at issue. Furthermore, information filed with a court is not protected by common-law privacy. *See Gov’t Code § 552.022(a)(17); Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Accordingly, this previous determination is not applicable to dates of birth contained in court-filed documents. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the department need not ask for a decision from this office again with respect to this type of information. *See ORD 673* at 7-8 (listing elements of second type of previous determination under Gov’t Code § 552.301(a)).
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](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/jxd

Ref: ID# 930433  
c: Requestor