



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 13, 2022

Ms. Stephanie Hernandez  
Administrative Support Specialist  
City of Carrollton  
P.O. Box 110535  
Carrollton, Texas 75011-0535

OR2022-38541

Dear Ms. Hernandez:

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# 989730 (City ID Nos. T004398 and T004495).

The City of Carrollton (the "city") received two requests from the same law firm for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's obligations with respect to the first request for information under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). The city received the first request for information on September 14, 2022. Accordingly, the city was required to provide the information required by section 552.301(b) for the first request by September 28, 2022. However, the envelope in which the city provided the information required by section 552.301(b) was postmarked September 29, 2022. *See* Gov't Code § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we conclude the city failed to comply with the procedural requirements mandated by section 552.301(b) of the Government Code with respect to the information responsive to the first request.

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 information at issue 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, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). You raise sections 552.101, 552.108, and 552.130 of the Government Code for some of the information at issue. 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 exceptions to the submitted information. However, we find you have failed to establish a compelling reason to address your remaining exception with respect to the information responsive to the first request. In addition, we note the information you submitted as responsive to the second request is also responsive to the first request. In failing to comply with the procedural requirements of section 552.301 in relation to the first request, you failed to comply with section 552.301 with respect to the same information responsive to the second request. *See* Gov't Code § 552.007 (prohibiting selective disclosure of information); Open Records Decision No. 463 at 1-2 (1987). Thus, we also do not address your argument under section 552.108 for the information that is responsive to the second request.

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, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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.). Upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note the requestors have a right of access to their client's confidential information pursuant to section 552.023 of the Government Code. *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). Therefore, the city must withhold the public citizen's date of birth not belonging to the requestors' client under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the city may not withhold any

portion of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code 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 section 552.130 protects personal privacy. Accordingly, the requestors have a right of access to their client's motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from them under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, with the exception of the information we have marked for release, the city must withhold the motor vehicle record information you marked and the additional information we have indicated under section 552.130 of the Government Code. However, we find the remaining information does not consist of motor vehicle record information subject to section 552.130 of the Government Code. Therefore, the city may not withhold any portion of the remaining information under section 552.130.

In summary, the city must withhold the public citizen's date of birth not belonging to the requestors' client under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we have marked for release, the city must withhold the motor vehicle record information you marked and the additional information we have indicated under section 552.130 of the Government Code. The city must release the remaining information.<sup>1</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,

Colin Henry  
Assistant Attorney General  
Open Records Division

CEH/mo

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<sup>1</sup> We note the requestors have 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.

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Enc. Submitted documents

c: Requestors  
(w/o enclosures)