



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 2, 2015

Mr. Brandon S. Shelby  
City Attorney  
City of Sherman  
P. O. Box 1106  
Sherman, Texas 75091

OR2015-22888

Dear Mr. Shelby:

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# 585395 (Sherman Ref. No. OR-1986, OR-1987).

The Sherman Police Department (the "department") received two requests from the same requestor for information concerning a specified incident and all reports involving a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to a pending criminal prosecution and release of the information would interfere with detection, investigation, and prosecution of a crime. *See*

*Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). However, some of the information at issue relates to a criminal mischief offense, an assault offense, and several parking violations. A criminal mischief offense is a misdemeanor with a limitations period of two years. See Act of June 1, 2015, 84th Leg., R.S. ch. 1251, § 5, 2015 Tex. Sess. Law Serv. 4208, 4210 (Vernon) (to be codified as an amendment to Penal Code § 28.03(b)); see also Crim. Proc. Code art. 12.02 (limitations on Class A, B, or C misdemeanor is two years from date of offense). An assault offense is a felony with a limitations period of two or three years. See Penal Code § 22.01(b)–(c) (assault is Class A, B, or C misdemeanor, or felony); see also Crim Proc. Code arts. 12.01(7) (limitations on felony not otherwise listed in article 12.01 of Code of Criminal Procedure is three years from date of offense), 12.02. More than two years have elapsed since the events giving rise to the criminal mischief offense; and more than three years have elapsed since the events giving rise to the assault offense. You have not informed this office that charges were filed within the limitations periods for either of these offenses. You also have not explained how the information related to the parking violations, which all occurred more than two years ago, concerns a pending criminal prosecution. Accordingly, the department may not withhold the information concerning the criminal mischief, assault, or parking violations under section 552.108(a)(1) of the Government Code. Nonetheless, based on your representations and our review, we conclude section 552.108(a)(1) of the Government Code does apply to the remaining information.

Section 552.108 does not except from disclosure basic information about a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 186–87. This information includes, but is not limited to, a sufficient portion of the narrative to include a detailed description of the offense. See Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the remaining information, which we marked, under section 552.108(a)(1) of the Government Code.

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. In considering whether a member of the public's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *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 supreme court concluded public employees' dates of birth are private under section 552.102

of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.<sup>1</sup> *Tex. Comptroller*, 354 S.W.3d at 347–48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to members of the public, and thus, their dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at \*3. Thus, the department must withhold all dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy. None of the remaining information is protected by common-law privacy, so the department may not withhold it under section 552.101 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country.<sup>2</sup> Gov't Code § 552.130(a)(1). Accordingly, the department must withhold any driver's license information under section 552.130 of the Government Code.

In summary, with the exception of basic information, the department may withhold the information we marked under section 552.108(a)(1) of the Government Code. The department must withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold any driver's license information under section 552.130 of the Government Code. The department must release the remaining information.<sup>3</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 [http://www.texasattorneygeneral.gov/open\\_orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open_orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

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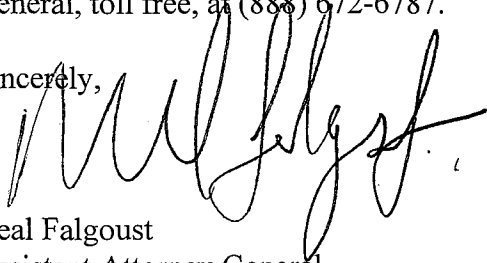
<sup>1</sup>Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

<sup>2</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).

<sup>3</sup>The remaining information contains social security numbers. Section 552.147 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* Gov't Code § 552.147(b).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Neal Falgoust', written over the word 'Sincerely,'.

Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/eb

Ref: ID# 585395

Enc. Submitted documents

c: Requestor  
(w/o enclosures)