



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 18, 2016

Ms. Shannon C. Francis  
Assistant County Attorney  
Williamson County  
405 Martin Luther King Street, Box 7  
Georgetown, Texas 78626

OR2016-18721

Dear Ms. Francis:

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# 629294.

The Williamson County Attorney's Office (the "county attorney's office") received a request for information pertaining to a specified accident. You state some information has been released to the requestor. You claim the requested 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.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The submitted information contains a court-filed document that is subject to section 552.022(a)(17). The county attorney's office must release this information pursuant to section 552.022(a)(17), unless it is made confidential under the Act

or other law. *See id.* Although you raise section 552.108 of the Government Code for the information subject to section 552.022(a)(17), this is a discretionary exception to disclosure that protects the governmental body's interests and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the county attorney's office may not withhold the court-filed document, which we have marked, under section 552.108. As no other exceptions to disclosure have been raised for the court-filed document, the county attorney's office must release this document. However, we will consider the arguments against disclosure of the remaining information.

Section 552.108 of the Government Code provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). A governmental body claiming section 552.108(a)(1) or 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information pertains to an ongoing criminal investigation or prosecution. We note the remaining information includes a DIC-24 Statutory Warning and a DIC-25 Notice of Suspension. Because copies of these forms were provided to the arrestee, we find the county attorney's office has not demonstrated release of the DIC-24 and DIC-25 forms will interfere with the detection, investigation, or prosecution of crime. Further, the county attorney's office has not demonstrated release of the DIC-24 and DIC-25 forms would interfere with law enforcement or prosecution. Accordingly, we conclude the DIC-24 and DIC-25 forms may not be withheld under section 552.108(a)(1) or section 552.108(b)(1). However, based on the submitted representations and our review, we conclude the release of the remaining information at issue would interfere with the detection, investigation, or prosecution of 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). Thus, section 552.108(a)(1) is applicable to the remaining information at issue.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the DIC-24 and DIC-25 forms and basic information, the county attorney's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>1</sup>

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 public citizen'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>2</sup> *Texas 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 public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at \*3. Accordingly, in releasing the DIC-24 and DIC-25 forms, the county attorney's office must withhold the public citizen's date 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.<sup>3</sup> See Gov't Code § 552.130. Accordingly, in releasing the

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>2</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>3</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).


DIC-24 and DIC-25 forms, the county attorney's office must withhold the motor vehicle record information under section 552.130 of the Government Code.

In summary, the county attorney's office must release the marked court-filed document pursuant to section 552.022(a)(17) of the Government Code. With the exception of the DIC-24 and DIC-25 forms and basic information, which must be released, the county attorney's office may withhold the remaining information under section 552.108(a)(1) of the Government Code. In releasing the DIC-24 and DIC-25 forms, the county attorney's office must withhold the public citizen's date of birth under section 552.101 of the Government Code in conjunction with common-law privacy and the motor vehicle record information under section 552.130 of the Government Code.

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

Sincerely,



Jesse Harvey  
Assistant Attorney General  
Open Records Division

JH/bw

Ref: ID# 629294

Enc. Submitted documents

c: Requestor  
(w/o enclosures)