



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 1, 2016

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
450 Cypress Creek Road
Cedar Park, Texas 78613

OR2016-26651

Dear Ms. Quinn:

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# 635972 (Ref. Nos. 16-1341 & 16-1342).

The City of Cedar Park (the "city") received two requests from the same requestor for information pertaining to a specified arrest of a named individual. You state you will make some information available to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.108 and 552.130 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 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 Exhibit C pertains to a pending criminal prosecution. Based on your representation, we conclude the release of the 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, the city may withhold Exhibit C under section 552.108(a)(1) of the Government Code.

We note some of the remaining information is subject to section 552.101 of the Government Code.¹ 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.² *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.

Upon review, we find the public citizen’s date of birth in the remaining information is generally confidential under section 552.101 of the Government Code in conjunction with common-law privacy. However, the requestor indicates she is the wife of the individual whose information is at issue, and may be acting as his authorized representative. As such, the requestor may have a right of access to her spouse’s information under section 552.023 of the Government Code. *See* Gov’t Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, if the requestor is acting as her spouse’s authorized representative, she has a right of access to his private information pursuant to section 552.023(a) of the Government Code, and it may not be withheld from her under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is not acting as her spouse’s authorized representative, the city must withhold the date of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

¹The 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).

²Section 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).

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. We note section 552.130 protects privacy interests. Thus, as noted above, the requestor may be her spouse's authorized representative, and may have a right of access to information pertaining solely to him that would otherwise be confidential. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, if the requestor is acting as her spouse's authorized representative, then the city may not withhold any motor vehicle record information pertaining solely to the requestor's spouse, which we marked, under section 552.130. If the requestor is not acting as her spouse's authorized representative, then the city must withhold the information that pertains solely to the individual at issue, which we marked, under section 552.130. In any event, the city must withhold the motor vehicle record information pertaining to other individual, which consists of the information you marked, under section 552.130 of the Government Code.

In summary, the city may withhold Exhibit C under section 552.108(a)(1) of the Government Code. If the requestor is not acting as her spouse's authorized representative, the city must withhold the date of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy and the information we marked under section 552.130 of the Government Code. The city must withhold the motor vehicle record information you marked 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 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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MJC/akg

Ref: ID# 635972

Enc. Submitted documents

c: Requestor
(w/o enclosures)