February 2, 2017

Ms. Jennifer Burnett  
Attorney & Public Information Coordinator  
Office of General Counsel  
The University of Texas System  
201 West 7th Street, Suite 600  
Austin, Texas 78701-2901

Dear Ms. Burnett:

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# 644144 (OGC# 172621).

The University of Texas of the Permian Basin (the “university”) received a request for a specified incident report investigated by the university’s police department (the “department”). You state the university will withhold motor vehicle record information pursuant to section 552.130(c) of the Government Code. 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 explain how and why the release of the requested

1Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 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).
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 pertains to a pending criminal investigation by the department. Based on this representation, we conclude the release of the information you have marked 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 information you have marked.

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). Section 552.108(c) refers to the basic information held to be public in Houston Chronicle. See 531 S.W.2d 177; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, a detailed description of the offense. See ORD 127 at 3-4. In this instance, you seek to withhold the narrative portion of the report at issue under section 552.108(a)(1). The remaining portions of the report do not contain information sufficient to satisfy the requirement that a “detailed description of the offense” be released as basic information. See id. Accordingly, we determine the university must release a sufficient portion of the narrative to encompass a detailed description of the offense to satisfy the required release of basic information pursuant to Houston Chronicle. Accordingly, with the exception of basic information, which must be released, the university may generally withhold the information you have marked under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code excepts “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, under which an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. Indus. Found., 540 S.W.2d 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. 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

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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).
WL 3394061, at *3. Thus, the university must withhold all public citizens’ dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note, however, in this instance, the requestor is a representative of the Texas State Board of Nursing (the “board”). Section 411.125 of the Government Code provides,

[The board] is entitled to obtain from the [Department of Public Safety (the “DPS”)] criminal history record information [(“CHRI”)] maintained by the [DPS] that relates to a person who:

1. is an applicant for or the holder of a license by the board;
2. has requested a determination of eligibility for a license from the board; or
3. is subject to investigation by the board in connection with a complaint or formal charge against the person.

Gov’t Code § 411.125. In addition, section 411.087(a) of the Government Code provides, in pertinent part,

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [DPS] [CHRI] maintained by the [DPS] that relates to another person is authorized to:

1. obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). CHRI is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” See id. § 411.082(2). In this instance, the submitted information contains CHRI. However, the board does not indicate, and we are not otherwise able to determine, whether the suspect in this case is an applicant for or a holder of a license from the board, has requested a determination of eligibility for a license from the board, or is subject to investigation by the board in connection with a complaint or formal charge against the suspect. Accordingly, we must rule in the alternative. If the suspect is an applicant for or a holder of a license from the board, has requested a determination of eligibility for a license from the board, or is subject to investigation by the board in connection with a complaint or formal charge against the suspect, then the board is authorized to obtain the suspect’s CHRI in the submitted
information pursuant to section 411.087(a)(2) of the Government Code. See id. §§ 411.087(a)(2), 125. In that instance, CHRI pertaining to the suspect must be released to the requestor. See Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). However, if the suspect in this case is not an applicant for or a holder of a license from the board, has not requested a determination of eligibility for a license from the board, and is not subject to investigation by the board in connection with a complaint or formal charge against the suspect, then the board is not authorized to obtain the suspect’s CHRI in the submitted information pursuant to section 411.087(a)(2) of the Government Code, and the university need not release such information to this requestor.

In summary, if the suspect is an applicant for or a holder of a license from the board, has requested a determination of eligibility for a license from the board, or is subject to investigation by the board in connection with a complaint or formal charge against the suspect, then the university must release the suspect’s CHRI to the requestor pursuant to section 411.087(a)(2) of the Government Code and, with the exception of basic information, withhold the remaining information you have marked under section 552.108(a)(1) of the Government Code. To the extent the suspect in this case is not an applicant for or a holder of a license from the board, has not requested a determination of eligibility for a license from the board, and is not subject to investigation by the board in connection with a complaint or formal charge against the suspect, with the exception of basic information, the university may withhold the information you have marked under section 552.108(a)(1) of the Government Code. In any event, the university must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The university must release the remaining information.

The university also asks this office to issue a previous determination permitting it to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without seeking a ruling from this office. See Gov’t Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We note our office issued a previous determination permitting the university to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy in Open Records Decision No. 2016-01245 (2016).

Finally, the university asks us to issue a previous determination permitting the university to withhold information subject to section 552.108(a)(1) of the Government Code without the necessity of requesting an attorney general opinion. See Gov’t Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Houston Chronicle v. Mattacx, 767 S.W.2d 695, 698 (Tex. 1989) (acknowledging this office has authority under section 552.301 of the Government Code to decide what constitutes a previous determination); Open Records Decision No. 673 (2001) (describing the two types of previous determinations). We note section 552.011 of the Government Code states “[t]he
attorney general shall maintain uniformity in the application, operation, and interpretation” of the Act, chapter 552 of the Government Code. Gov’t Code § 552.011. Pursuant to this legislative mandate, section 552.011 grants the attorney general the authority to “prepare, distribute, and publish any materials, including detailed and comprehensive written decisions and opinions, that relate to or are based on” the Act. Id. We further note the Act requires governmental bodies to promptly release public information requested under the Act within a reasonable time, without delay. Id. § 552.221(a); Open Records Decision No. 664 at 5 (2000).

With the foregoing in mind and upon due consideration, we issue this ruling, which constitutes a previous determination allowing the university to withhold certain information under section 552.108(a)(1) of the Government Code without the necessity of first requesting an attorney general decision, so long as the university has not previously received a request for the information from the same requestor in the manner described below. See ORD 673. This decision is intended to encourage the prompt release of requested public information by increasing the efficiency of the review process under the Act by clearly identifying information the university may withhold under the circumstances delineated below. See Gov’t Code §§ 552.011, .221; Open Records Decision Nos. 684 (2009), 673.

Accordingly, the university may withhold certain information under section 552.108(a)(1) of the Government Code without the necessity of first requesting a ruling from this office in the following circumstances:

1. the university makes a good faith determination that the information at issue relates to the detection, investigation, or prosecution of crime, and the release of the information would interfere with the detection, investigation, or prosecution of an open or pending criminal matter;

2. the university will release at least the basic information about an arrested person, an arrest, or a crime (the “releasable information”) from the requested information;

3. the university will produce the releasable information to the requestor pursuant to the requirements of the Act within five business days after the date the request for information was received;

4. the university will provide the requestor with the notice included in Appendix A of this ruling when the university responds to the request pursuant to the requirements of this previous determination; and

5. the university has not previously received a request for the same information from the same requestor after the university has provided the requestor with the releasable information.
See Gov't Code § 552.011. If any of the above circumstances change—or any other law, facts, or circumstances involving the requestor or the status of the requested information changes—the university may not rely upon this ruling as a previous determination to withhold the information at issue. See ORD 673 at 7. Additionally, the university may not rely on this previous determination in response to requests in which basic information is not responsive. For example, no basic information is at issue in a request for only a dashboard camera video recording or 9-1-1 call audio recording. Thus, the university may not rely on this previous determination in response to those types of requests. Furthermore, this previous determination does not apply to situations in which other law may require some or all of the information at issue to be disclosed. See, e.g., Crim. Proc. Code arts. 2.139 (detailing right of access to videos made in connection with various types of driving while intoxicated offenses), 2.29 (detailing right of access to written report to law enforcement agency of alleged violation of Penal Code section 32.51); Gov't Code §§ 411.081-.1410 (detailing rights of access to criminal history record information), 560.002(1)(A) (detailing rights of access to fingerprints and other biometric identifiers); Transp. Code §§ 550.065 (detailing rights of access to crash report forms), 724.018 (detailing right of access to blood or breath specimen analysis results). We also note this previous determination does not permit the disclosure of basic information in those instances in which the entirety of the information at issue must be withheld. See, e.g., Fam. Code §§ 58.007 (detailing circumstances under which certain information related to juvenile offenders must be withheld in its entirety), 261.201 (detailing circumstances under which certain information related to investigations of child abuse or neglect must be withheld in its entirety); Open Records Decision No. 393 (1983) (stating, because the identifying information of a sexual assault victim was inextricably intertwined with other releasable information, the governmental body was required to withhold the information in its entirety). We further note this previous determination does not permit the university to withhold citations; DIC-24 statutory warnings; DIC-25 notices of suspension; criminal trespass warnings; notices of code violations; triplicate forms; or information subject to section 552.007 or section 552.022 of the Government Code, other than information subject to section 552.022(a)(1). See Gov't Code §§ 552.007, .022(a)(1)-(18), .108(a)(1). However, the use of this previous determination does not preclude the university from withholding information pursuant to other statutory authority or previous determinations that apply to the university. See, e.g., id. §§ 552.1175(f), .130(c), .136(c), .147(b); ORD 684.

If the university’s use of this previous determination does not fall within all of the circumstances delineated above, the requirements of the Act apply, including section 552.301 of the Government Code, and deadlines under the Act run from the date the university received the initial written request for information. See Gov't Code § 552.301(a); Mattox, 767 S.W.2d at 698. Consequently, misapplication of this previous determination may result in the presumption the requested information is public. See Gov't Code § 552.302. Thus, if the university is unsure as to the applicability of this previous determination to information responsive to a request for information, the university should request a ruling from this office. Additionally, this office may modify or withdraw this previous determination for any reason, including, but not limited to, misapplication of this
previous determination. See id. § 552.011; Mattox, 767 S.W.2d at 698; see also Open Records Decision Nos. 485 at 3 (1987), 673 at 5. Finally, if the university later requests a ruling from this office in response to a second request for the same information from the same requestor, the university should notify this office it relied upon this previous determination in its response to the initial request.

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,

[Signature]
Joseph Bellino
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 644144

Enc. Submitted documents

c: Requestor
(w/o enclosures)
Dear M:

NOTICE:

On [date], we received your public information request for [description of information requested], dated [date request received] (the “request”). In order to promote governmental efficiency and encourage the prompt release of information, as required by the Public Information Act, we have relied upon Open Records Letter No. 2017-02395 (20XX) in responding to your request. We do so within five business days of your request.

The university has made a good faith determination the information you requested:

- deals with the detection, investigation, or prosecution of crime and the release of the records would interfere with the detection, investigation, or prosecution of an open or pending criminal matter.

This information is subject to section 552.108(a)(1) of the Government Code. The university has also determined you have not previously requested this information. Therefore, pursuant to the previous determination granted by the Office of the Attorney General in Open Records Letter No. 2017-02395, the university is releasing some information to you, and is withholding the remaining responsive information subject to section 552.108(a)(1) of the Government Code.

Please note, we are withholding the following specified types of information:

- Incident report (except basic information)
- Witness/suspect interview(s)
- Video recording(s)
- Audio recording(s)
- Other: (specify documents withheld)

If you have questions regarding the use of this previous determination, please call the university at XXX-XXX-XXXX, or for more information concerning your rights and the responsibilities of the university, please visit the Office of the Attorney General’s website at https://www.texasattorneygeneral.gov/og/information-about-552.108a1-previous-determinations, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. You may also review general information about the Public Information Act, including the types of information included in basic information, in the 2016 Public Information Handbook at http://www.texasattorneygeneral.gov/files/og/publicinfo_hb.pdf.

1 If you request this information a second time, the university must request a ruling from the Office of the Attorney General (the “OAG”) in order to withhold the information. See Open Records Letter No. 2017-02395.