



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 16, 2017

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

OR2017-05471

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# 649409 (Reference# OR-2642, SPD# 214).

The Sherman Police Department (the "department") received a request for all police reports pertaining to the requestor for a specified time period. You state the department has released some information. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.148 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). Generally, 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, 710 (Tex. 1977). You state the submitted information pertains to a potentially pending criminal prosecution. We note the submitted reports pertain to an alleged assault with bodily injury and an alleged aggravated assault with a deadly weapon. The statute of limitations for assault with bodily injury is two years from the date of the offense. *See* Penal Code § 22.01(a)(1) (assault); *see also* Crim. Proc. Code art. 12.02(a) (indictment or information for misdemeanor assault must be

presented within two years). The statute of limitations for aggravated assault with a deadly weapon is three years from the date of the offense. *See* Penal Code § 22.02(a)(2) (aggravated assault); *see also* Crim. Proc. Code art. 12.01(7) (felony indictments must be presented within three years). More than two years have elapsed since the underlying incident for the alleged assault occurred and more than three years have elapsed since the underlying incident for the alleged aggravated assault occurred. You have not informed this office any criminal charges were filed within the applicable limitations periods. Thus, we find you have failed to demonstrate the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the department may not withhold the submitted information under section 552.108(a)(1) of the Government Code.

Section 552.148 of the Government Code provides the following:

- (a) In this section, “minor” means a person younger than 18 years of age.
- (b) The following information maintained by a municipality for purposes related to the participation by a minor in a recreational program or activity is excepted from [required disclosure]:
  - (1) the name, age, home address, home telephone number, or social security number of the minor;
  - (2) a photograph of the minor; and
  - (3) the name of the minor’s parent or legal guardian.

*Id.* § 552.148. Section 552.148 specifically applies to information maintained by a municipality “for purposes related to the participation by a minor in a recreational program or activity[.]” *Id.* § 552.148(b). Because the submitted information is not related to participation in a recreational program or activity, section 552.148 of the Government Code does not apply, and the department may not withhold any of the submitted information on this basis.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>1</sup> Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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. 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. We note the information at issue includes the requestor's date of birth. The requestor has a right of access to this information. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are 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). Accordingly, the department must withhold the public citizens' dates of birth not belonging to the requestor 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 a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130. We note section 552.130 protects personal privacy and the requestor has a right of access to his own motor vehicle record information under section 552.023 of the Government Code. *Id.* § 552.023; ORD 481 at 4. Accordingly, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, the department must withhold the public citizens' dates of birth not belonging to the requestor under section 552.101 of the Government Code in conjunction with

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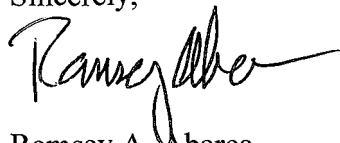
<sup>2</sup>Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

common-law privacy. The department must withhold the information we marked under section 552.130 of the Government Code. The remaining information must be released.<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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/bw

Ref: ID# 649409

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note the information being released contains the requestor's date of birth to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a). If the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.