



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 6, 2017

Ms. Ileana Fernandez
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2017-07302

Dear Ms. Fernandez:

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# 652006.

The Mesquite Police Department (the "department") received two requests from different requestors for information pertaining to a specified incident. You state you will release some information to the requestors. You further state you will redact certain information in accordance with Open Records Letter No. 2012-07334 (2012).¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 52.130, and 552.147 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 Exhibits 3 and 4 relate to

¹Open Records Letter No. 2012-07334 is a previous determination authorizing the department to withhold Federal Bureau of Investigation numbers under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law without requesting a ruling from this office.

a pending investigation. Based on your representation and our review, we find 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 department may withhold Exhibits 3 and 4 under section 552.108(a)(1) of the Government Code.²

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 chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter E-1 or subchapter F of the Government Code. *See Gov't Code* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter E-1 or subchapter F of the Government Code. Upon review, we find the information you marked consists of CHRI that is confidential under section 411.083. Accordingly, the department must withhold the information you marked under section 552.101 in conjunction with section 411.083 of the Government Code.³

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 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. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22,

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

³We note the second requestor can obtain his client's CHRI from DPS. Gov't Code § 411.083(b)(3).

2015, pet. denied) (mem. op.). You state you will redact the dates of birth of living persons you marked pursuant to the previous determination issued to the department in Open Records Letter No. 2015-24970 (2015).⁴ However, we note some of the information at issue pertains to a fictitious individual. Accordingly, the department may not withhold this information, which we have marked for release, pursuant to the previous determination issued to the department in Open Records Letter No. 2015-24970. The department must withhold the remaining dates of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy in accordance with the previous determination issued in Open Records Letter No. 2015-24970.

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(a). Upon review, we find the department must withhold the motor vehicle record information you marked and we have marked under section 552.130 of the Government Code.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *Id.* § 552.147. Upon review, the department may withhold the social security numbers you marked under section 552.147 of the Government Code.

In summary, the department may withhold Exhibits 3 and 4 under section 552.108(a)(1) of the Government Code. The department must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. With the exception of the information we have marked for release, the department must withhold the remaining dates of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy in accordance with the previous determination issued in Open Records Letter No. 2015-24970. The department must withhold the motor vehicle record information you marked and we have marked under section 552.130 of the Government Code. The department may withhold the social security numbers you marked under section 552.147 of the Government Code. The department must release the remaining information.⁵

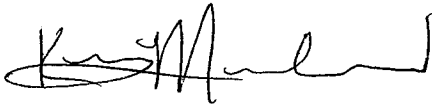
⁴Open Records Letter No. 2015-24970 is a previous determination authorizing the department to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

⁵We note the second requestor has a special right of access to some of the information being released. *See* Gov't Code § 552.023(a) (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); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves).

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,

A handwritten signature in black ink, appearing to read "Kenny Moreland", written over a horizontal line.

Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/sdk

Ref: ID# 652006

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)