



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 11, 2017

Mr. Jeremy Page  
Counsel for the Town of Flower Mound  
Taylor, Olson, Adkins, Sralla, Elam, LLP  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2017-07616

Dear Mr. Page:

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# 652928.

The Town of Flower Mound (the "town"), which you represent, received a request for all information pertaining to a named individual, including information pertaining to a specified incident. You state the town will redact certain information pursuant to section 552.147(b) of the Government Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes information subject to section 552.022(a)(17) of the Government Code, which provides for required public disclosure of "information that is also contained in a public court record," unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). Although the town seeks to withhold this information under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a 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), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the town may not withhold the information subject to section 552.022, which we marked, under section 552.108. You further seek to withhold portions of the marked court-filed documents under section 552.101 of the Government Code in conjunction with common-law privacy. We note common-law privacy

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<sup>1</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. Gov't Code § 552.147(b).

is not applicable to information contained in public court records. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, no portion of the submitted court-filed documents may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note some of this information is subject to section 552.130 of the Government Code. Because section 552.130 makes information confidential under the Act, we will address its applicability to the information subject to section 552.022(a)(17). We will also address the town's argument under section 552.108 of the Government Code for the information not subject to section 552.022.

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 the submitted information relates to an ongoing criminal investigation. We note, however, the information at issue includes DIC-24 statutory warnings. The town provided copies of these forms to the arrestee. You have not explained releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See Gov’t Code* § 552.108(a)(1). Accordingly, the DIC-24 forms may not be withheld under section 552.108(a)(1). Based on your representation and our review, we find release of the remaining information 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). Section 552.108(a)(1) is applicable to the remaining information.

We note 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 forms and basic information, the town may generally withhold the remaining information under section 552.108(a)(1) of the Government Code.

However, in this instance, the requestor is an investigator for the Texas Education Agency (the “TEA”), which has assumed the duties of the State Board for Educator Certification (the “SBEC”).<sup>2</sup> The requestor states the TEA is conducting an investigation of the named individual, who either has applied for or currently holds educator credentials. As mentioned above, the submitted information pertains to a pending criminal investigation. Section 22.082 of the Education Code provides the SBEC “may obtain from any law

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<sup>2</sup>The 79th Texas Legislature passed House Bill 1116, which required the transfer of the SBEC’s administrative functions and services to the TEA, effective September 1, 2005.

enforcement or criminal justice agency all criminal history record information [“CHRI”] and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under Subchapter B, Chapter 21 [of the Education Code].” Educ. Code § 22.082. Section 411.090 of the Government Code grants the SBEC a right of access to obtain CHRI from the Texas Department of Public Safety (the “DPS”) regarding persons who have applied to the SBEC. *See* Gov’t Code § 411.090. Additionally, section 411.0901 of the Government Code specifically provides the TEA with a right of access to obtain CHRI maintained by the DPS regarding certain school employees or applicants for employment. *See id.* § 411.0901. Pursuant to section 411.087 of the Government Code, an agency entitled to obtain CHRI from the DPS also is authorized to “obtain from any other criminal justice agency in this state [CHRI] maintained by that [agency].” *Id.* § 411.087(a). CHRI consists of “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.” *Id.* § 411.082(2).

We find, when read together, sections 22.082 of the Education Code and 411.087 of the Government Code give the TEA a statutory right of access to some of the submitted information. *Cf. Brookshire v. Houston Indep. Sch. Dist.*, 508 S.W.2d 675, 678-79 (Tex. Civ. App.—Houston [14th Dist.] 1974, no writ) (when legislature defines term in one statute and uses same term in relation to same subject matter in latter statute, later use of term is same as previously defined). Thus, we conclude the town must release to this requestor information that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. Although you also raise section 552.108 of the Government Code for the information at issue, a specific access provision prevails over the general exceptions found in the Act. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under Act). Thus, with the exception of the DIC-24 forms and basic information, which must be released, the town may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>3</sup>

Section 552.101 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. 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, 2015, pet. denied) (mem. op.). Thus, the town must withhold the public citizen’s date of birth we marked in the DIC-24 form under section 552.101 of the Government Code in conjunction with common-law privacy.

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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. Accordingly, the town must withhold the motor vehicle record information we marked in the court-filed documents and the DIC-24 forms under section 552.130 of the Government Code.

In summary, the town must release CHRI from the submitted information to the requestor, and, with the exception of the information subject to section 552.022(a)(17) of the Government Code, the DIC-24 forms, and basic information, the town may withhold the remaining information under section 552.108(a)(1) of the Government Code. The town must withhold the public citizen's date of birth we marked in the DIC-24 form under section 552.101 of the Government Code in conjunction with common-law privacy. The town must withhold the motor vehicle record information we marked in the court-filed documents and the DIC-24 forms under section 552.130 of the Government Code. The remaining information must be released.

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,



Emily Buchanan  
Assistant Attorney General  
Open Records Division

EB/eb

Ref: ID# 652928

Enc. Submitted documents

c: Requestor  
(w/o enclosures)