



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 12, 2017

Ms. Kristen Mills
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2017-07794

Dear Ms. Mills:

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# 652942 (PIR Nos. 8143 & 8186).

The Baytown Police Department (the "department") received two requests from different requestors for all information pertaining to a specified incident. You state the department has released some information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.152 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 information at issue relates to a pending criminal investigation and prosecution. Based upon this representation, we conclude the release of this 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, 186-87 (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, 560-61 (Tex. 1976). Accordingly, the department may withhold the information you have highlighted in yellow under section 552.108(a)(1) 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, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate 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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Further, the Third Court of Appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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.).

Upon review, we find the information at issue satisfies the standard established by the Texas Supreme Court in *Industrial Foundation*. Thus, the department must generally withhold the information you have marked in blue under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note the first requestor may be acting as the authorized representative of one of the individuals whose privacy interests are at issue. Thus, to the extent the first requestor is acting as the authorized representative of the individual at issue, the first requestor has a special right of access under section 552.023 of the Government Code to the individual at issue’s date of birth, which would otherwise be withheld to protect his privacy. Consequently, in that instance, the department may not withhold this date of birth, which we have marked, from the first requestor under section 552.101 of the Government Code on the basis of common-law privacy. *See* Gov’t Code § 552.023(b) (governmental body may not deny access to person or person’s representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

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. Upon review, we find the

¹As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information.

department must generally withhold the motor vehicle record information you have marked in red under section 552.130 of the Government Code. However, the first requestor may be acting as the authorized representative of one of the individuals whose motor vehicle record information is at issue. Section 552.130 is designed to protect the privacy of individuals. *See id.* § 552.023(a); ORD 481 at 4. Therefore, to the extent the first requestor is acting as the authorized representative of the individual at issue, the first requestor has a special right of access under section 552.023 of the Government Code to the motor vehicle record information we have marked, and the department may not withhold this information on the basis of section 552.130 of the Government Code.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 [of the Government Code] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. You inform us the information at issue relates to undercover police officers. You state release of this information would subject these officers to a substantial threat of physical harm. Based on your representations and our review, we find you have demonstrated the release of the information at issue would subject the officers at issue to a substantial threat of harm. Thus, the department must withhold the information you have marked in black under section 552.152 of the Government Code.

In summary, the department may withhold the information you have highlighted in yellow under section 552.108(a)(1) of the Government Code. The department must generally withhold the information you have marked in blue under section 552.101 of the Government Code in conjunction with common-law privacy, as well as the information you have marked in red under section 552.130 of the Government Code. However, if the first requestor is acting as the authorized representative of the individual at issue, then, pursuant to section 552.023 of the Government Code, the department must release to the first requestor the date of birth we have marked and the motor vehicle record information we have marked. The department must withhold the information you have marked in black under section 552.152 of the Government Code. The department 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,

A handwritten signature in black ink that reads "Cole Hutchison". The signature is written in a cursive style with a large initial "C".

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/sb

Ref: ID# 652942

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)