



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 17, 2017

Ms. P. Armstrong  
Assistant City Attorney  
City of Dallas  
1400 South Lamar Street  
Dallas, Texas 75215

OR2017-08091

Dear Ms. Armstrong:

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# 653607 (ORR# 2016-25322).

The Dallas Police Department (the "department") received a request for all information related to a specified police report.<sup>1</sup> We understand you will redact social security numbers under section 552.147(b) of the Government Code.<sup>2</sup> You claim portions of the submitted information are 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 representative sample of information.<sup>3</sup> We have also received and considered

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<sup>1</sup>We note you sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (providing if request for information is unclear, governmental body may ask requestor to clarify request).

<sup>2</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. *See* Gov't Code § 552.147(b).

<sup>3</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Initially, we note the department has previously released some of the information you have marked to the requestor. However, you seek to withhold this information under section 552.108 of the Government Code. We note the Act does not permit the selective disclosure of information. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold that exact information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). *But see* Open Records Decision Nos. 579 (1990) (exchange of information among litigants in "informal" discovery is not "voluntary" release of information for purposes of statutory predecessor to Gov't Code § 552.007), 454 at 2 (1986) (governmental body that disclosed information because it reasonably concluded that it had constitutional obligation to do so could still invoke statutory predecessor to Gov't Code § 552.108). Although you raise section 552.108 for the information, this section is a discretionary exception and does not make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Accordingly, none of the previously released information, which we have marked, may be withheld under section 552.108 of the Government Code. However, as sections 552.101 and 552.130 of the Government Code make information confidential under law, we will consider the applicability of these exceptions to the previously released information. Furthermore, we will address your arguments for the information which has not been previously released.

Next, we note, and you acknowledge, the department has not complied with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. *See* Gov't Code § 552.301. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public and must be released unless there is a compelling reason to withhold it. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302). The need of a governmental body, other than the agency that failed to timely seek an open records decision, to withhold information under section 552.108 of the Government Code can provide a compelling reason sufficient to overcome the presumption of openness. *See* Open Records Decision No. 586 at 2-3 (1991). Because you inform us, and provide documentation

showing, the Dallas County District Attorney's Office (the "district attorney's office") objects to the release of the information at issue, we will consider whether the department may withhold the information you have marked under section 552.108 on behalf of the district attorney's office. Additionally, you raise sections 552.101 and 552.130 of the Government Code. Because sections 552.101 and 552.130 can provide compelling reasons to overcome the presumption of openness, we will also address your arguments under these sections for the information at issue.

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 information you have marked is related to a pending criminal investigation. You further provide a representation from the district attorney's office objecting to disclosure of the information at issue because its release would interfere with the pending investigation. Based on the submitted representations, we conclude the 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, section 552.108(a)(1) is applicable to the information at issue. Accordingly, with the exception of the previously released information, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.<sup>4</sup>

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 of the Government Code encompasses the common-law physical safety exception. The Texas Supreme Court has recognized, for the first time, a common-law physical safety exception to required disclosure. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112, 118 (Tex. 2011). Pursuant to this common-law physical safety exception, "information may be withheld [from public release] if disclosure would create a substantial threat of physical harm." *Id.* In applying this standard, the court noted "deference must be afforded" law enforcement experts regarding the probability of harm, but further cautioned, "vague assertions of risk will not carry the day." *Id.* at 119.

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

You state the department officers you have marked work in undercover or covert capacities. You contend disclosure of the information at issue would endanger the safety and well-being of the officers. Upon review, we find you have demonstrated the release of the identifying information you have marked would create a substantial threat of physical harm to the officers. Accordingly, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

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, 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 and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. The 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 department must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. You have also marked an individual’s Adult Identification System number. We find you have failed to demonstrate this information is highly intimate or embarrassing and of no legitimate public interest. Thus, the remaining information you have marked may not be withheld 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 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 department must withhold the motor vehicle record information you have marked, along with the additional motor vehicle record information we have marked, under section 552.130 of the Government Code.

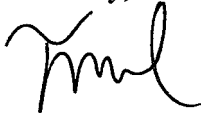
The requestor asserts a right of access to this motor vehicle record information under section 730.007 of the Transportation Code. Chapter 730 is applicable only to an “agency . . . that compiles or maintains motor vehicle records.” Transp. Code § 730.003(1). The department is not an agency as defined by section 730.003(1). Therefore, chapter 730 does not apply to the department, and we conclude the requestor does not have a right of access to this information pursuant to chapter 730 of the Transportation Code.

In summary, with the exception of the previously released information, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office. The department must withhold: (1) the information you have marked under section 552.101 of the Government Code in conjunction with the common-law physical safety exception; (2) all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) the motor vehicle record information you have marked, along with the additional motor vehicle record information we have marked, under section 552.130 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](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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/sdk

Ref: ID# 653607

Enc. Submitted documents

c: Requestor  
(w/o enclosures)