



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 18, 2017

Mr. Jose Hernandez
Records Supervisor
Edinburg Police Department
1702 South Closner Boulevard
Edinburg, Texas 78539

OR2017-08251

Dear Mr. Hernandez:

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# 653893 (REF# 97518).

The Edinburg Police Department (the "department") received a request for all call outs to a specified address regarding a named individual. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 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 the information at issue pertains to an open criminal investigation. Based on your representation, 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, the department may generally withhold the information you have marked under section 552.108(a)(1) of the Government Code.¹

However, we note the requestor is a representative of the Texas Department of Family and Protective Services (“DFPS”). Section 411.114 of the Government Code allows, among other things, for DFPS to obtain criminal history record information (“CHRI”) concerning an individual who is the subject of a report of abuse or neglect of a child. *See* Gov’t Code § 411.114(a)(4), (a)(2)(I). 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.” *See id.* § 411.082(2).

In this instance, the requestor does not state whether any of the offenders listed in the submitted information is a suspect in a report of abuse or neglect of a child. Therefore, we are unable to determine whether section 411.114 of the Government Code gives the requestor a right of access to the CHRI in the submitted information, and we must rule conditionally. *See id.* § 411.114; *see also id.* § 411.082(2). Accordingly, if any of the offenders in the submitted information is a suspect in a report of abuse or neglect of a child, then the department must release CHRI pertaining to the offender at issue to this requestor. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, the department may withhold the remaining information you marked under section 552.108(a)(1) of the Government Code. However, if the offenders in the submitted information are not suspects in a report of abuse or neglect of a child, then the department may withhold the information you marked under section 552.108(a)(1) of the Government Code.

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. *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 department must withhold all public citizens’ dates of birth 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. Accordingly, the department must

¹As we make this determination, we do not address your remaining claim for this information.

withhold the motor vehicle record information you marked in the remaining records under section 552.130 of the Government Code.

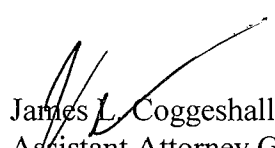
Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *Id.* § 552.147. Upon review, we find the department may withhold the social security numbers you marked in the remaining information under section 552.147 of the Government Code.

In summary, if any of the offenders in the submitted information is a suspect in a report of abuse or neglect of a child, then the department must release CHRI pertaining to the offender at issue pursuant to section 411.114 of the Government Code. In that instance, the department may withhold the remaining information you marked under section 552.108(a)(1) of the Government Code. However, if the offender in the submitted information is not a suspect in a report of abuse or neglect of a child, then the department may withhold the information you marked under section 552.108(a)(1) of the Government Code. The department must withhold the public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information you marked in the remaining records under section 552.130 of the Government Code. The department may withhold the social security numbers you marked in the remaining information under section 552.147 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/CN/nmd

Ref: ID# 653893

Enc. Submitted documents

c: Requestor
(w/o enclosures)