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ATTORNEY GENERAL OF TEXAS

May 26, 2017

Mr. Christopher Gregg
Counsel for the City of Nassau Bay
Gregg & Gregg, P.C.
16055 Space Center Boulevard, Suite 150
Houston, Texas 77062

OR2017-11559

Dear Mr. Gregg:

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# 659324 (Nassau ID# PD17-0046).

The City of Nassau Bay (the "city"), which you represent, received a request for a specified report. You claim the submitted information is excepted from disclosure under sections 552.108, 552.115, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 of the Government Code states, in pertinent part, the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [is excepted from required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). A governmental body claiming sections 552.108(a)(1) and 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us the submitted information pertains to a criminal investigation that resulted in a conviction. You state you are unaware as to whether the conviction has been appealed, and you assert the information at issue should be withheld under section 552.108 to the extent the defendant's appeal rights have not been exhausted. Thus, we understand the city to argue the information at issue pertains to a criminal prosecution that is pending because the defendant still might appeal. However, we note a mere chance of an appeal is insufficient to demonstrate the release of the submitted information will interfere with law enforcement efforts. Therefore, you have not demonstrated release of the information at issue would interfere either with the detection, investigation, or prosecution of a particular crime or with law enforcement or prosecutorial efforts in general. Thus, the city may not withhold any of the information at issue under section 552.108(a)(1) or section 552.108(b)(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."¹ 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.). However, we note the requestor has a right of access to his own date of birth pursuant to section 552.023 of the Government Code. *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); ORD 481 at 4 (privacy theories not implicated when individuals request information concerning themselves). Thus, with the exception of the requestor's date of birth, the city must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.²

Section 552.130 of the Government Code excepts from disclosure 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. Therefore, the city must

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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

withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

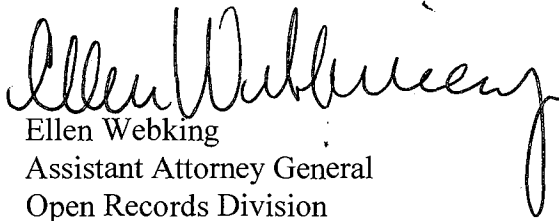
Section 552.115 of the Government Code excepts from disclosure “[a] birth or death record maintained by the vital statistics unit of the Department of State Health Services or a local registration official[.]” *Id.* § 552.115. Section 552.115 is applicable only to information maintained by the vital statistics unit or local registration official. *See* Open Records Decision No. 338 (1982). The remaining information at issue is maintained by the city, and not by a vital statistics unit or local registration official. Therefore, the city may not withhold any of the remaining information under section 552.115 of the Government Code.

In summary, with the exception of the requestor’s date of birth, the city must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The city 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,


Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 659324

Enc. Submitted documents

c: Requestor
(w/o enclosures)