



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 31, 2017

Mr. T. Daniel Santee
Counsel for the City of Copperas Cove
Denton Navarro Rocha Bernal Hyde & Zech, P.C.
2517 North Main Avenue
San Antonio, Texas 78212-4685

OR2017-11870

Dear Mr. Santee:

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# 666520.

The City of Copperas Cove (the "city"), which you represent, received a request for all records pertaining to a specified address over a specified time period. 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.

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 reasonably 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 report number 17-1365 pertains to an on-going 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, section 552.108(a)(1) is applicable to report number 17-1365.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state police report numbers 2017-0433 and 2017-0796 pertain to investigations that did not end in conviction or deferred adjudication. Based on your representation, section 552.108(a)(2) of the Government Code is applicable to police report numbers 2017-0433 and 2017-0796.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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 basic information, the city may withhold report number 17-1365 under section 552.108(a)(1) of the Government Code and police report numbers 2017-0433 and 2017-0796 under section 552.108(a)(2) 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, 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Furthermore, 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. *Indus. Found.*, 540 S.W.2d at 682. In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *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.). The supreme court concluded public employees' dates of birth are

private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.¹ *Tex. Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. Thus, the city must withhold the dates of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we also find the some of the information you have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, some of the remaining information you seek to withhold is not private. Accordingly, with the exception of the information we have marked for release, the city must also withhold the information you have marked 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. The city must withhold the motor vehicle record information it has marked under section 552.130 of the Government Code.

In summary, with the exception of the basic information, the city may withhold report number 17-1365 under section 552.108(a)(1) of the Government Code and police report numbers 2017-0433 and 2017-0796 under section 552.108(a)(2) of the Government Code. With the exception of the information we have marked for release, the city must withhold the information you have marked and the dates of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information it has marked under section 552.130 of the Government Code. The remaining information must be released.

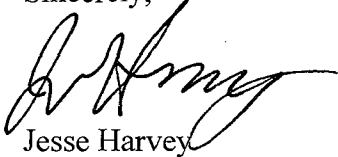
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

¹Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

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, appearing to read "Jesse Harvey". The signature is fluid and cursive, with the first name "Jesse" being more prominent than the last name "Harvey".

Jesse Harvey
Assistant Attorney General
Open Records Division

JH/bw

Ref: ID# 666520

Enc. Submitted documents

c: Requestor
(w/o enclosures)