



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 7, 2017

Mr. Oscar G. Gabaldón, Jr.
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2017-12560

Dear Mr. Gabaldón:

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# 667932 (City File No. 17-1026-8486).

The City of El Paso (the "city") received a request for a specified case file. You state the city will release some information, including the DIC-24 and DIC-25 forms, to the requestor. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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 submitted information pertains to a pending criminal prosecution. 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 the remaining submitted information.

However, we note, and you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 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, which must be released, the city may withhold the remaining submitted information 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.”¹ Gov't Code § 552.101. This section 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 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.). We note the requestor may be acting as the authorized representative of the individual to whom the date of birth in the DIC-24 and DIC-25 forms pertains. Therefore, to the extent the requestor is acting as the authorized representative of the individual to the date of birth at issue pertains, the city may not withhold the date of birth in the DIC-24 and DIC-25 forms under section 552.101 of the Government Code in conjunction with common-law privacy. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Conversely, to the extent the requestor is not acting as the authorized representative of the individual to whom the date of birth at issue pertains, the city must withhold the date of birth in the DIC-24 and DIC-25 forms 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. We note section 552.130 protects privacy interests. As noted above, the requestor may be acting as the authorized representative of the individual whose motor vehicle record information is at issue, and may have a right of access to this information. See *id.* § 552.023(a); ORD 481 at 4. Thus, if the requestor is acting as the authorized representative of the individual at issue, then the city may not withhold the motor vehicle record information in the DIC-24 and DIC-25 forms from this requestor under section 552.130 of the Government Code. However, if the requestor is not acting as the individual's authorized representative, then 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).

withhold the motor vehicle record information we have marked in the DIC-24 and DIC-25 forms under section 552.130 of the Government Code.

In summary, with the exception of the basic information, which must be released, the city may withhold the remaining submitted information under section 552.108(a)(1) of the Government Code. If the requestor is not acting as the individual at issue's authorized representative, then the city must withhold the date of birth in the DIC-24 and DIC-25 forms under section 552.101 of the Government Code in conjunction with common-law privacy and the motor vehicle record information we have marked in the DIC-24 and DIC-25 forms under section 552.130 of the Government Code. The city must release the remaining information in the DIC-24 and DIC-25 forms.

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/tdw

Ref: ID# 667932

Enc. Submitted documents

c: Requestor
(w/o enclosures)