



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 22, 2017

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2017-13960

Dear Mr. Dempsey:

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# 663152 (PIR No. GCA17-0176).

The Garland Police Department (the "department") received a request for information pertaining to a specified incident involving two named individuals. You state the department has released some information. You claim portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you inform us the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2017-06550 (2017). In the previous ruling, we concluded the department may withhold the information you marked under section 552.108(a)(1) of the Government Code and must release the remaining information, including the date of birth of the requestor at issue in Open Records Letter No. 2017-06550. The Act does not permit selective disclosure of information to the public. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Information that has been released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). You now seek to withhold the date of birth of the requestor at issue in Open Records Letter

No. 2017-06550, which we directed the department to release. Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 neither prohibits public disclosure of information nor makes information confidential under law. Thus, the department may not now withhold the date of birth of the requestor at issue in Open Records Letter No. 2017-06550 under section 552.108. However, we will address whether the information at issue is otherwise excepted from disclosure. As we have no indication the law, facts, and circumstances on which the previous ruling was based have changed with regard to the remaining information at issue, the department may rely on Open Records Letter No. 2017-06550 as a previous determination and withhold or release the remaining information in accordance with that ruling.

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.). Thus, the department must withhold the date of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

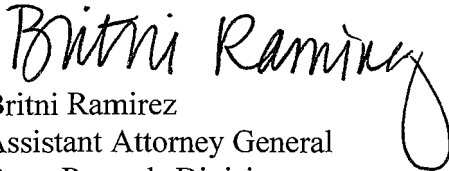
In summary, with the exception of the date of birth of the requestor at issue in Open Records Letter No. 2017-06550, the department may rely on Open Records Letter No. 2017-06550 as a previous determination and withhold or release the submitted information in accordance with that ruling. The department must withhold the date of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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.

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

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,


Britni Ramirez
Assistant Attorney General
Open Records Division

BR/som

Ref: ID# 663152

Enc. Submitted documents

c: Requestor
(w/o enclosures)