



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 29, 2017

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2017-14557

Dear Mr. Kopp:

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# 664609 (COSA File No. W165749).

The City of San Antonio (the "city") received a request for the incident detail report pertaining to a specified incident. You state the city will redact information pursuant to sections 552.130(c), 552.136(c), and 552.147(b) of the Government Code.¹ You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

Code § 552.101. Section 552.101 encompasses the federal Driver's Privacy Protection Act of 1994 (the "DPPA"), section 2721 of title 18 of the United States Code. Section 2721 provides, in part, the following:

(a) In general — A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section; or

(2) highly restricted personal information, as defined in 18 U.S.C. 2725(4), about any individual obtained by the department in connection with a motor vehicle record, without the express consent of the person to whom such information applies, except uses permitted in subsections (b)(1), (b)(4), (b)(6), and (b)(9)[.]

(b) Permissible uses.—Personal information referred to in subsection (a) . . . and, subject to subsection (a)(2), may be disclosed as follows:

(1) For use by any government agency . . . in carrying out its functions.

...

(c) Resale or redisclosure.—An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b)(11) or (12)). . . . Any authorized recipient (except a recipient under subsection (b)(11)) that resells or rediscloses personal information covered by this chapter must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

18 U.S.C. § 2721(a), (b)(1), (c). The DPPA defines "motor vehicle record," in relevant part, as "any record that pertains to a motor vehicle operator's permit . . . issued by a department of motor vehicles[.]" *Id.* § 2725(1). Section 2725 also defines personal information as "information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status." *See id.* § 2725(3).

We note section 2721(a) is applicable to state departments of motor vehicles. *See id.* § 2721(a). Further, pursuant to section 2721(b), personal information may be disclosed to certain entities by a state department of motor vehicles. *See id.* § 2721(b). You assert the information at issue contains personal information that is protected under the DPPA. You inform us the city's police department obtained the personal information at issue from the Texas Department of Public Safety ("DPS") in the course of performing its law enforcement functions. Based upon your representations, we find the city, in obtaining personal information from DPS to assist the city in carrying out its law enforcement functions, is an authorized recipient of personal information for purposes of section 2721(c). *See* 18 U.S.C. § 2721(b)(1) (providing that personal information may be disclosed by a state department of motor vehicles to any entity acting on behalf of a Federal, State, or local agency in carrying out its functions). Upon review, we find the information we have marked is personal information obtained from DPS by an authorized recipient and is confidential under section 2721 of title 18 of the United States Code. Accordingly, as we have no indication that release of this information would be for a use permitted under section 2721(b), we conclude the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 2721(a) of title 18 of the United States Code. *See* 18 U.S.C. § 2721(a)(1). However, we find you have failed to demonstrate the remaining information at issue is subject to section 2721(a). Accordingly, the city may not withhold any of the remaining information at issue under section 552.101 on that basis.

You state the city will redact dates of birth pursuant to the previous determination issued to the city in Open Records Letter No. 2016-08566 (2016).² However, we note the information at issue pertains to individuals who have been de-identified pursuant to section 2721(a) of title 18 of the United States Code and whose privacy interests are, thus, protected. Accordingly, the city may not withhold the dates of birth of the de-identified individuals pursuant to the previous determination issued to the city in Open Records Letter No. 2016-08566.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 2721(a) of title 18 of the United States Code. The city must release the remaining information at issue.

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.

²Open Records Letter No. 2016-08566 is a previous determination authorizing the city to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/sb

Ref: ID# 664609

Enc. Submitted documents

c: Requestor
(w/o enclosures)