



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 31, 2017

Ms. Michelle Buendia
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar Street
Dallas, Texas 75215

OR2017-17131

Dear Ms Buendia:

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# 669144 (ORR # 2017-08663).

The Dallas Police Department (the "department") received a request for information pertaining to a specified case. You claim some of the submitted information is exempted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.1175, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.108(a)(1) of the Government Code exempts 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 information you have marked pertains to an active criminal investigation or prosecution. Based upon this representation and our review, we find release of the information at issue would interfere

¹We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.²

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. *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 dates of birth we have marked in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov’t Code § 552.1175. Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(1). We note section 552.1175 also encompasses a personal cellular telephone number, provided a governmental body does not pay for the cellular phone service. *See Open Records Decision No. 506 at 5-7 (1988)*. Upon review, we find the remaining information contains information that may be subject to section 552.1175. Accordingly, to the extent the information we marked relates to an individual who is a licensed peace officer and elects to restrict access to his information in accordance with section 552.1175(b), the department must withhold this information under section 552.1175 of the Government Code; however, the department may only withhold the personal cellular telephone number under section 552.1175 if a governmental body did not pay for the cellular telephone service. Conversely, if the individual at issue is not licensed peace officer or does not elect to restrict access to his information in accordance with section 552.1175(b), the department may not withhold the marked information under section 552.1175 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s license or driver’s license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See Gov’t Code § 552.130(a)(1)-(2)*. Upon review, we find the department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

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

To the extent the social security number is not excepted from disclosure under section 552.1175 of the Government Code, you claim it is excepted under section 552.147 of the Government Code. Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *Id.* § 552.147(a). Accordingly, the department may withhold the social security number you have marked under section 552.147 of the Government Code.

In summary, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must withhold the dates of birth we have marked in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information we marked relates to an individual who is a licensed peace officer and elects to restrict access to his information in accordance with section 552.1175(b), the department must withhold the information we marked under section 552.1175 of the Government Code; however the department may only withhold the personal cellular telephone number under section 552.1175 if a governmental body did not pay for the cellular telephone service. The department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code. To the extent the social security number is not excepted from disclosure under section 552.1175 of the Government Code, the department may withhold the social security number you have marked under section 552.147 of the Government Code. The department 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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/sdk

Ref: ID# 669144

Enc. Submitted documents

c: Requestor
(w/o enclosures)