



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 4, 2017

Mr. John C. West
General Counsel
Office of the Inspector General
Texas Department of Criminal Justice
4616 Howard Lane, Suite 250
Austin, Texas 78728

OR2017-17611

Dear Mr. West:

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# 669529.

The Texas Department of Criminal Justice's Office of the Inspector General (the "department") received a request for specified documents involving the requestor. The department states it will withhold information subject to section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code, will withhold certain information pursuant to section 552.1175 of the Government Code, and will withhold social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim the

¹Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body. *See* Gov't Code § 552.117(a)(1). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(c). Section 552.1175(f) of the Government Code authorizes a governmental body to redact under section 552.1175(b), without the necessity of requesting a decision from this office, the home addresses and telephone numbers, emergency contact information, social security number, date of birth, and family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure who properly elects to keep this information confidential. *See id.* § 552.1175(b), (f). 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).

submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.130, and 552.134 of the Government Code.² 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, 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 case numbers 1500009015, 1600001825, and 1600009511 relate to open criminal investigations. Based upon these representations, we conclude the release of case numbers 1500009015, 1600001825, and 1600009511 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publishing 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) of the Government Code is applicable to case numbers 1500009015, 1600001825, and 1600009511.

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). Therefore, with the exception of the basic information, the department may withhold case numbers 1500009015, 1600001825, and 1600009511 under section 552.108(a)(1) of the Government Code.³

The department asserts the remaining information is excepted from release under section 552.134 of the Government Code. Section 552.134(a) relates to inmates of the Texas Department of Criminal Justice (the “department”) and provides the following:

Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the [department] is excepted from [required public disclosure] if it is information about an

²Although you also raise sections 552.136, 552.137, and 552.140 of the Government Code, you have not provided any arguments to support these exceptions. Therefore, we assume you have withdrawn your claim these sections apply to the submitted information. *See* Gov’t Code §§ 552.301, .302.

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information, except to note basic information is generally not excepted from disclosure under section 552.134 of the Government Code. *See* Gov’t Code § 552.029(8) (basic information pertaining to alleged crime involving inmate not excepted under section 552.134).

inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). Section 552.029 of the Government Code provides, in part,

[n]otwithstanding Section . . . 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the [department] is subject to required disclosure under Section 552.021:

...

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Id. § 552.029(8). You contend the remaining information constitutes information about inmates for purposes of section 552.134. Upon review, we find case numbers SC.15.00103.2014.TO and 1600002717 pertain to the conduct of department employees, and therefore, are not “about an inmate” for purposes of section 552.134 and this information may not be withheld in its entirety on that basis. However, we note the information at issue includes inmate-identifying information. Accordingly, the department must withhold the information we marked under section 552.134 of the Government Code.⁴ We find the department has failed to establish any of the remaining information relates to department inmates for purposes of section 552.134 of the Government Code, and the department may not withhold any of the remaining information on that basis.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” *Id.* § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Thus, under *Texas Comptroller*, section 552.102(a) is applicable to the birth date of an employee of a governmental body in a record maintained by his or her employer in an employment context. We note the remaining information includes the requestor’s date of birth. Because section 552.102 protects personal privacy, the requestor has a right of access to his date of birth under section 552.023 of the Government Code and it may not be withheld from him under section 552.102(a). *See* Gov’t Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, with the

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

exception of the requestor's date of birth, the department must withhold the dates of birth of department employees in the remaining information that is maintained by the department in an employment context under section 552.102(a) of the Government Code.⁵

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 public citizen's date of birth we 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. Accordingly, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, with the exception of basic information, which must be released, the department may withhold case numbers 1500009015, 1600001825, and 1600009511 under section 552.108(a)(1) of the Government Code. The department must withhold the information we marked under section 552.134 of the Government Code. With the exception of the requestor's date of birth, the department must withhold the dates of birth of department employees in the remaining submitted information that is maintained by the department in an employment context under section 552.102(a) of the Government Code. The department must withhold the public citizen's date of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The department must release the remaining information.⁶

⁵As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

⁶We note the requestor has a right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the department receives another request for the same information from a different requestor, the department must again seek a decision from this office.

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,



Ian Lancaster
Assistant Attorney General
Open Records Division

IML/tdw

Ref: ID# 669529

Enc. Submitted documents

c: Requestor
(w/o enclosures)