



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 23, 2017

Mr. Jeffrey T. Ulmann
Counsel for the City of Lago Vista
The Knight Law Firm, LLP
Executive Office Terrace Suites
203 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2017-19295

Dear Mr. Ulmann:

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# 672095.

The Lago Vista Police Department (the "department"), which you represent, received a request for statements made by a named individual with respect to a specified address or involving the requestor and his spouse, information pertaining to the specified address, and information pertaining to three named individuals during a certain time period. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note, the department sought a clarification of some of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). However, you state the department has not yet received a response to the request for clarification. We note a governmental body has a duty to make a good-faith effort to relate a request for information to information the governmental body

holds. Open Records Decision No. 561 (1990). In this instance, you have submitted information you believe is responsive to the request and made arguments against disclosure of this information. Thus, we assume the department has made a good-faith effort to relate the request to information the department holds, and we will address the applicability of your arguments to the information. However, the department has no obligation at this time to release any additional responsive information for which the department has not received clarification. If the requestor responds to the request for clarification, the department must seek a ruling from this office before withholding any additional responsive information. See Gov't Code § 552.222(b); *City of Dallas*, 304 S.W.3d at 387.

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, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, requires the department to compile unspecified law enforcement records concerning the named individuals. We find this request for unspecified law enforcement records implicates the named individuals' rights to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

Additionally, we note, the requestor is seeking information related to a specified address. Thus, we find this portion of the request does not require the department to compile any specific individual's criminal history and does not implicate the privacy interest of any individual. Further, information that refers to an individual solely as a victim, witness, or involved person is not part of a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis. We note you have submitted information in which the named individuals are not depicted as suspects, arrestees, or criminal defendants. This information does not implicate the privacy interests of the individuals and

may not be withheld as a compilation of criminal history. Accordingly, we will address your arguments against disclosure of this information.

Section 552.108(a) 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 the information at issue relates to ongoing cases, and release of that information would interfere with the investigation and prosecution of the cases. Based upon this 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 information we marked.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 (1986). You state the information at issue pertains to a criminal investigation that did not result in a conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to the information we marked.

However, 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). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note, basic information does not include dates of birth. *See* ORD 127 at 3-4. Accordingly, with the exception of basic information, which must be released, the department may withhold the information we marked under section 552.108(a)(1) of the Government Code and the information we marked under section 552.108(a)(2) of the Government Code.

As stated above, section 552.101 of the Government of the Code encompasses the doctrine of common-law privacy. Types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation*. *Indus. Found.*, 540 S.W.2d at 683. The 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 information at issue includes the dates of birth of the requestor and his spouse. Section 552.023(a) of the Government Code states that a person or a person's authorized representative has a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest. *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). Accordingly, the requestor has a right of access to his date of birth as well as his spouse's date of birth if he is acting as his spouse's authorized representative. Therefore, the department may not withhold the requestor's own date of birth from him under common-law privacy. Furthermore, if the requestor is acting as his spouse's authorized representative, then the department may not withhold his spouse's date of birth under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as his spouse's authorized representative, then the department must withhold her date of birth under section 552.101 in conjunction with common-law privacy. In either instance, the department must withhold all remaining dates of birth not belonging to the requestor or his spouse 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.¹ *See Gov't Code § 552.130(a)*. We note section 552.130 protects privacy interests. Accordingly, the requestor has a right of access to his own motor vehicle record information pursuant to section 552.023 of the Government Code and it may not be withheld from him. *See id.* § 552.023(a); ORD 481 at 4. Furthermore, as noted above, the requestor may be acting as the authorized representative of his spouse, and therefore, may have a special right of access to information pertaining solely to her that would otherwise be confidential. *See id.* § 552.023(a); ORD 481 at 4. Thus, if the requestor is acting as his spouse's authorized representative, then the department may not withhold any motor vehicle record information pertaining solely to the requestor's spouse from this requestor under section 552.130. However, if the requestor is not acting as his spouse's authorized representative, then the department must withhold any motor vehicle record information pertaining solely to the requestor's spouse, which we marked, under section 552.130. In either instance, the department must withhold the remaining motor vehicle information we marked under section 552.130.

In summary, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must

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).

withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, which must be released, the department may withhold the information we marked under section 552.108(a)(1) of the Government Code and the information we marked under section 552.108(a)(2) of the Government Code. If the requestor is not acting as his spouse's authorized representative, then the department must withhold (1) her date of birth under section 552.101 of the Government Code in conjunction with common-law privacy and (2) any motor vehicle record information pertaining solely to the requestor's spouse, which we marked, under section 552.130 of the Government Code. The department must withhold all remaining dates of birth not belonging to the requestor or his spouse under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the remaining motor vehicle record information we marked under section 552.130. 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,



Emily Kunst
Attorney
Open Records Division

EK/eb

Ref: ID# 672095

Enc. Submitted documents

c: Requestor
(w/o enclosures)