



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 29, 2017

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

OR2017-19764

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# 673302 (COSA File No. W171967).

The City of San Antonio (the "city") received a request for information pertaining to a specified motor vehicle accident. You state you have released some information. You state you will redact information under sections 552.130(c), 552.136, and 552.147(b) of the Government Code.¹ You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

¹We note section 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(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *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).

Section 552.101 of the Government Code exempts 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 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:

(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[.]

...

(b) Permissible uses.—Personal information referred to in subsection (a) . . . 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)(1), (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).

You assert portions of the submitted information consist of personal information obtained from the Texas Department of Public Safety (“DPS”) that are protected under the DPPA. We note this office has concluded that the DPPA applies to information in the possession of DPS. Attorney General Opinion JC-0499 at 1 (2002). You explain the city obtained the personal information for use in carrying out its functions with regard to law enforcement. Based upon your representations and our review, 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). Therefore, we conclude the information we 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. However, an authorized recipient of personal information for purposes of section 2721(c) may only resell or redisclose the information for a use permitted under subsection (b), but not for uses under subsections (b)(11) or (b)(12). *See id.* § 2721(c). Section 2721(b)(13) provides for the permissible release of personal information subject to the DPPA if the requestor demonstrates he has obtained the written consent of the individual to whom the information pertains. *See id.* § 2721(b)(13). In this instance, the requestor is the authorized representative of one of the individuals to whom the information pertains. Therefore, the city has the discretion to release the requestor’s client’s information at issue pursuant to subsections 2721(c) and (b)(13) of title 18 of the United States Code. *See id.* § 2721 (b)(13), (c). Otherwise the city must withhold the requestor’s client’s information at issue under section 552.101 of the Government Code in conjunction with section 2721 of title 18 of the United States Code. In either case, as we have no indication that release of the remaining information at issue would be for a use permitted under section 2721(b), we conclude the city must withhold the information pertaining to other individuals, which we marked, under section 552.101 of the Government Code in conjunction with section 2721(a) of title 18 of the United States Code. *See id.* § 2721(a)(1). However, we find no portion of the remaining information consists of personal information obtained from the DPS, and it may not be withheld under section 552.101 of the Government Code on that basis.

You state you will redact dates of birth pursuant to 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.

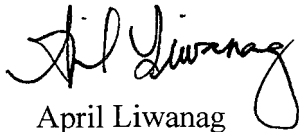
²Open Records Letter No. 2016-08566 authorizes the city to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general decision.

In summary, the marked personal information must generally be withheld under section 552.101 of the Government Code in conjunction with section 2721(a) of title 18 of the United States Code, but the city has the discretion to release the marked information pertaining to the requestor's client pursuant to subsections 2721(c) and (b)(13) of title 18 of the United States Code. The city 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,



April Liwanag
Attorney
Open Records Division

AML/eb

Ref: ID# 673302

Enc. Submitted documents

c: Requestor
(w/o enclosures)