



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 26, 2017

Ms. Dawn Bracket
Counsel for the Town of Addison
Messer, Rockefeller & Fort, P.L.L.C.
6371 Preston Road, Suite 200
Frisco, Texas 75034

OR2017-22039

Dear Ms. Bracket:

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# 676986 (Reference No. W004842-070617).

The Town of Addison (the "town"), which you represent, received a request for information pertaining to a specified report. You state the town has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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 . . . 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). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Where a governmental body has custody of information relating to a pending case of another law enforcement agency, the custodian of records may withhold the information if it provides this office with a demonstration the information relates to a pending criminal case and a representation from

the law enforcement agency that it wishes to have the information withheld. The town asserts the information at issue relates to a pending investigation being conducted by the Kaufman Police Department (the “department”). However, the town has not provided a representation from the department, nor has the department provided a representation to this office, stating it wishes to withhold the information at issue. Therefore, you have failed to demonstrate the applicability of section 552.108(a)(1). Accordingly, the town may not withhold the submitted information under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ 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 town must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

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 town must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail address at issue is not a type specifically excluded by section 552.137(c). Accordingly, the town must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure.


In summary, the town must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The town must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The town must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure. The remaining information must be released.

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/sb

Ref: ID# 676986

Enc. Submitted documents

c: Requestor
(w/o enclosures)