



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 13, 2017

Ms. Kristen Mills
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2017-25939

Dear Ms. Mills:

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# 684019 (PIR# 9581, 9835).

The Baytown Police Department (the "department") received two requests from the same requestor for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. 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 the information you marked relates to an ongoing criminal investigation, and release of that information would interfere with the investigation and prosecution of the case. Based upon this representation, we conclude the release of the information you marked 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 you marked. Accordingly, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code.¹

Section 552.101 of the Government Code excepts “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 is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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.). Upon review, we find the information you marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note, however, the requestor represents the insurance provider for the individual listed in the submitted information. As such, the requestor, if acting as the individual’s authorized representative, has a right of access to the individual’s private information. *See* Gov’t Code § 552.023(a) (“[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). Therefore, to the extent the requestor is acting as the individual’s authorized representative, the department must release to the requestor the information at issue. To the extent the requestor is not acting as the individual’s authorized representative, the department must withhold the remaining information you 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. As noted above, the requestor represents the insurance provider for the individual listed in the submitted information. As such, the requestor, if acting as the individual’s authorized representative, has a right of access to the individual’s motor vehicle record information. *See id.* § 552.023(a); ORD 481

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

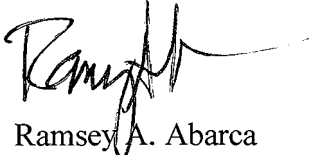
at 4. Therefore, to the extent the requestor is acting as the individual's authorized representative, the department must release to the requestor the information you marked under section 552.130 of the Government Code. To the extent the requestor is not acting as the individual's authorized representative, the department must withhold the motor vehicle record information you marked, and the additional information we marked, under section 552.130 of the Government Code.

In summary, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code. To the extent the requestor is not acting as the individual's authorized representative, the department must withhold the remaining information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the requestor is not acting as the individual's authorized representative, the department must withhold the motor vehicle record information you marked, and the additional information we marked, under section 552.130 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/gw

Ref: ID# 684019

Enc. Submitted documents

c: Requestor
(w/o enclosures)