



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 1, 2017

Mr. Jason Cozza
City Secretary/Administrator
City of Hallettsville
101 North Main
Hallettsville, Texas 77964-2727

OR2017-27372

Dear Mr. Cozza:

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# 686330 (PIR# 201709111030PD).

The City of Hallettsville (the "city") received a request for a specified offense report pertaining to a named individual. You state the city will release some information. You claim portions of the submitted information are 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.

We note the submitted information contains a CR-3 accident report that is subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator's accident report), .062 (officer's accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity shall release an accident report in accordance with subsections (c) and (c-1). *Id.* § 550.065(c), (c-1)). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c).

In this instance, the requestor is the authorized representative of a person listed under section 550.065(c). Although the city asserts section 552.108 to withhold the information, a statutory right of access prevails over the Act's general exceptions to public disclosure. *See, e.g.*, Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Because section 552.108 is a general exception under the Act, the requestor's statutory access under section 550.065(c) prevails and the city may not withhold the information at issue under section 552.108 of the Government Code. Accordingly, the city must release the CR-3 accident report we have marked pursuant to section 550.065(c) of the Transportation Code.

Next, we note the remaining information contains the requestor's client's fingerprints. Access to fingerprint information is governed by sections 560.001, 560.002, and 560.003 of the Government Code. Section 560.003 of the Government Code provides, "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." Gov't Code § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Section 560.002 of the Government Code provides, however, that "[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]" *Id.* § 560.002(1)(A). Thus, section 560.002(1)(A) of the Government Code gives an individual or his authorized representative a right of access to his own fingerprint information. The general exceptions found in the Act, such as section 552.108 of the Government Code, cannot impinge on a statutory right of access to information. *See* ORDs 613 at 4, 451 at 4. Accordingly, the requestor has a right of access to his client's fingerprints we marked pursuant to section 560.002(1)(A) of the Government Code, and the city must release them to this requestor.

The city asserts the remaining information is excepted from disclosure under section 552.108(a)(1) of the Government Code. 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). The city states the remaining information it marked pertains to an ongoing criminal investigation or prosecution. Based on this representation and our review, we find release of the remaining 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, we find section 552.108(a)(1) is applicable to the remaining

information you marked. Accordingly, the city may withhold the remaining information you marked under section 552.108(a)(1) of the Government Code.

The city claims portions of the remaining information are protected under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 of the Government Code excepts from public 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 Third 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.). However, we note the requestor has a right of access to his client’s date of birth under section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a) (“person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to 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 individual requests information concerning themselves). Thus, pursuant to section 552.023, the city may not withhold the information it marked pertaining to the requestor’s client in this instance. Accordingly, with the exception of the requestor’s client’s date of birth, which we marked for release, the city must withhold all public citizens’ dates of birth it 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. We note, because section 552.130 protects privacy interests, the requestor has a right of access to his client’s motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, with the exception of the requestor’s client’s motor vehicle record information, which we marked for release, the city must withhold the motor vehicle record information it marked under section 552.130 of the Government Code.

In summary, the city must release the CR-3 accident report we marked pursuant to section 550.065(c) of the Transportation Code. The city must release the fingerprints we marked under section 560.002(1)(A) of the Government Code. The city may withhold the remaining information it marked under section 552.108(a)(1) of the Government Code. With the exception of the requestor’s client’s date of birth, the city must withhold all public citizens’ dates of birth it marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the requestor’s client’s motor vehicle record information, the city must withhold the motor vehicle record information it

marked under section 552.130 of the Government Code. The remaining information must be released.

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,



James M. Graham
Attorney
Open Records Division

JMG/eb

Ref: ID# 686330

Enc. Submitted documents

c: Requestor
(w/o enclosures)