



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 7, 2017

Mr. Renato Garcia  
Assistant City Attorney  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2017-27880

Dear Mr. Garcia:

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# 687555 (City File Nos. 1134, KD011, and 1164).

The City of Corpus Christi, the Corpus Christi Police Department, and the Corpus Christi Fire Department (collectively, the "city") each received a request from the same requestor for information pertaining to a specified incident. The city informs us it will make some information available to the requestor. The city states it will withhold social security numbers pursuant to section 552.147(b) of the Government Code.<sup>1</sup> The city also states it will withhold information pursuant to Open Records Letter Nos. 2011-16393 (2011) and 2011-17207 (2011).<sup>2</sup> The city claims some of the submitted information is excepted

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<sup>1</sup>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* Gov't Code § 552.147(b).

<sup>2</sup>Open Records Letter No. 2011-16393 is a previous determination authorizing the city to withhold, under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code, the originating telephone numbers and addresses of 9-1-1 callers furnished to the city by a 9-1-1 service supplier established in accordance with chapter 772 of the Health and Safety Code without requesting a decision from this office. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when elements of law, facts, and circumstances have not changed, decision concludes specific, clearly delineated category of information is excepted, and governmental body is explicitly informed it need not seek a decision from this office to withhold information in response to future requests). Open Records Letter No. 2011-17207 is a previous determination authorizing the city to withhold Federal Bureau of Investigation numbers under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code without requesting a decision from this office.

from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the submitted information includes court-filed documents, which we have marked. Section 552.022(a)(17) of the Government Code provides for required public disclosure of “information that is also contained in a public court record[.]” unless the information is expressly made confidential under the Act or other law. Gov’t Code § 552.022(a)(17). The city seeks to withhold the court-filed documents under section 552.108 of the Government Code. However, this section is a discretionary exception to disclosure that protects a governmental body’s interests and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the city may not withhold the court-filed documents under section 552.108. The city also seeks to withhold portions of the court-filed documents under section 552.101 of the Government Code in conjunction with common-law privacy. We note common-law privacy is not applicable to information contained in public court records. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, no portion of the submitted court-filed documents may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. As no other exceptions against disclosure of the marked court-filed documents have been raised, the city must release them. However, we will address the city’s arguments against disclosure of the remaining 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). The city states the information it marked relates to an active investigation or prosecution. Generally, the release of information pertaining to an open case is presumed to interfere with the criminal investigation. *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). We note, however, the information at issue includes a DIC-24 Statutory Warning. The DIC-24 form has previously been provided to the arrestee. Because a copy of this document has previously been released to the arrestee, we find the city has not shown release of this document will interfere with the detection, investigation, or prosecution of crime, and this document may not be withheld under section 552.108(a)(1). *See* Gov’t Code § 552.108(a)(1). Because the remaining information the city marked has not been previously released, we conclude release of this information would interfere with the detection, investigation, or prosecution of crime. Thus, with the exception of the DIC-24 form, the city

may withhold the information it marked under section 552.108(a)(1) of the Government Code.<sup>3</sup>

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 information protected by section 773.091 of the Health and Safety Code, which provides in part:

(a) A communication between certified emergency medical services [(“EMS”)] personnel or a physician providing medical supervision and a patient that is made in the course of providing [EMS] to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation, or treatment of a patient by [EMS] personnel or by a physician providing medical supervision that are created by the [EMS] personnel or physician or maintained by an [EMS] provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(a)-(b), (g). The remaining information contains records made and maintained by EMS personnel. Upon review, we find section 773.091 is applicable to the information we have marked. Thus, with the exception of the information subject to section 773.091(g), which is not confidential, the city must withhold the marked EMS records under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.

The city states it will withhold living public citizens’ dates of birth pursuant to a previous determination issued to the city in Open Records Letter No. 2016-00831 (2016).<sup>4</sup> We note the remaining information contains an additional date of birth. Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found.*

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<sup>3</sup>As our ruling is dispositive, we need not address the city’s remaining arguments against disclosure of this information.

<sup>4</sup>Open Records Letter No. 2016-00831 is a previous determination issued to the city authorizing it to withhold the dates of birth of living public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting a decision from this office.

*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 information at issue contains the dates of birth of individuals who will be de-identified and whose privacy interests will, thus, be protected. As such, with the exception of dates of birth belonging to de-identified individuals, the city must withhold the public citizens' dates of birth it marked and the additional date of birth we 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. Accordingly, the city must withhold the motor vehicle record information it marked and the additional motor vehicle record information we marked under section 552.130 of the Government Code.

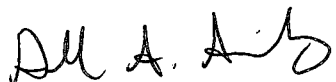
In summary, the city must release the marked court-filed documents pursuant to section 552.022(a)(17) of the Government Code. With the exception of the DIC-24 form, the city may withhold the information it marked under section 552.108(a)(1) of the Government Code. With the exception of the information subject to section 773.091(g), the city must withhold the EMS records we have marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. With the exception of dates of birth belonging to de-identified individuals, the city must withhold the public citizens' dates of birth it marked and the additional date of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information it marked and the additional motor vehicle record information we marked under section 552.130 of the Government 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](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,

A handwritten signature in black ink, appearing to read "Gerald A. Arismendez". The signature is fluid and cursive, with the first name "Gerald" being the most prominent.

Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/tdw

Ref: ID# 687555

Enc. Submitted documents

c: Requestor  
(w/o enclosures)