



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 13, 2017

Ms. Julie A. Masek
Assistant General Counsel
Office of General Counsel
The Texas A&M University System
301 Tarrow Street, 6th Floor
College Station, Texas 77840-7896

OR2017-28237

Dear Ms. Masek:

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# 690076 (ORR Nos. R001909 & R001948).

Texas A&M University (the "university") received two requests from different requestors for case number 17-1007-0004. The university claims some of the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code.¹ We have considered the exceptions the university claims and reviewed the submitted information.

Initially, we note the information the university seeks to withhold includes a court-filed document. 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 university seeks to withhold the information at issue under sections 552.103 and 552.108 of the Government Code. However, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and do not make information confidential under the Act. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.)

¹Although the university does not raise sections 552.101 and 552.130 of the Government Code in its brief, we understand the university to raise these exceptions based on its markings.

(governmental body may waive Gov't Code § 552.103); 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 university may not withhold the court-filed document, which we noted, under section 552.103 or section 552.108. However, we will address the university's arguments against disclosure of the remaining information at issue.

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 university has provided documentation from the Brazos County Attorney's Office (the “county attorney's office”) demonstrating the submitted information relates to an active investigation or prosecution and objecting to release of the information. 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), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). We note, however, the information at issue includes a DIC-24 Statutory Warning and a DIC-25 Notice of Suspension. The Statutory Warning and Notice of Suspension have previously been provided to the arrestee. Because copies of these documents have previously been released to the arrestee, we find release of any portion of these documents will not interfere with the detection, investigation, or prosecution of crime, and no portion of these documents may be withheld under section 552.108(a)(1). *See* Gov't Code § 552.108(a)(1). Because the remaining information the university marked has not been previously released, we conclude release of this information would interfere with the detection, investigation, or prosecution of crime. Thus, the university may withhold the remaining information it marked under section 552.108(a)(1) of the Government Code on behalf of the county attorney's office.²

Section 552.101 of the Government Code excepts 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 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.).

²As our ruling is dispositive for this information, we need not address the university's argument under section 552.103 of the Government Code against its disclosure.

Thus, the university must withhold the public citizen's date of birth within the Statutory Warning and Notice of Suspension, which the university 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 university must withhold the motor vehicle record information within the Statutory Warning and Notice of Suspension, which the university marked, under section 552.130 of the Government Code.

In summary, with the exception of the court-filed document subject to section 552.022(a)(17) of the Government Code, which we noted, and the Statutory Warning and Notice of Suspension, the university may withhold the information it marked under section 552.108(a)(1) of the Government Code on behalf of the county attorney's office. The university must withhold (1) the public citizen's date of birth within the Statutory Warning and Notice of Suspension, which the university marked, under section 552.101 of the Government Code in conjunction with common-law privacy; and (2) the motor vehicle record information within the Statutory Warning and Notice of Suspension, which the university marked, under section 552.130 of the Government Code. The university 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 690076

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)