



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 19, 2017

Ms. Captoria Brown
Paralegal
City of Carrollton
1945 East Jackson
Carrollton, Texas 75006

OR2017-28816

Dear Ms. Brown:

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# 693859 (City ID # 11436, 11446, 11503).

The City of Carrollton (the "city") received three requests for information from different requestors pertaining to a specified incident. The city states it has released some of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first address your claim under section 552.108 of the Government Code, as it is potentially the most encompassing. 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). You state the information you have marked relates to a pending criminal investigation or prosecution. Based upon this representation and our review, we find release of the information at issue 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) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

The city asserts the dates of birth are excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 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 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.).

However, we note the information at issue includes the second requestor's date of birth and the third requestor's date of birth. These requestors have a right of access to their own dates of birth. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access to records that contain information relating to the person that are 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 himself). Accordingly, the city must withhold the public citizens' dates of birth from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. Except for the second requestor's date of birth, the city must withhold all public citizens' dates of birth from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy. Except for the third requestor's date of birth, the city must withhold the public citizens' dates of birth from the third requestor 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). We note section 552.130 protects personal privacy. Accordingly, the second requestor has a right of access to his own motor vehicle record information under section 552.023 of the Government Code and it may not be withheld under section 552.130. *See id.* § 552.023(a); ORD 481. Upon review, we find the city must withhold the motor vehicle record information you have marked from the first and third requestors under section 552.130 of the Government Code.

Section 552.137 of the Government Code 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). We note the third requestor has a right of access to her own e-mail address pursuant to section 552.137(b) of the Government Code. *See id.* § 552.137(b). The e-mail addresses at issue are not a type specifically excluded by section 552.137(c). Accordingly, the city must withhold the e-mail addresses we have marked from the first and second requestors under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure. The city must withhold the e-mail address we have marked from the third requestor under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure. However, the remaining e-mail address you have marked consists of the city-provided e-mail address of a city employee. This information is not subject to section 552.137 and may not be withheld on that basis.

Next, you seek to withhold a portion of the remaining information under section 552.147 of the Government Code. This section provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.¹ *Id.* § 552.147(a). We note the social security number you seek to withhold belongs to the second requestor. Section 552.147 is based on privacy principles. Thus, the second requestor has a right of access to his own social security number, and it may not be withheld from him under section 552.147. *See id.* § 552.023(a); ORD 481. Accordingly, the city may withhold the social security number you have marked from the first and third requestors under section 552.147 of the Government Code.

In summary, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The city must withhold all public citizens’ dates of birth from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. Except for the second requestor’s date of birth, the city must withhold the public citizens’ dates of birth from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy. Except for the third requestor’s date of birth, the city must withhold the public citizens’ dates of birth from the third requestor under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information it marked from the first and third requestors under section 552.130 of the Government Code. The city must withhold the e-mail addresses we have marked from the first and second requestors under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure. The city may withhold the social security number you have marked from

¹We note 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 under the Act. Gov’t Code § 552.147(b).

the first and third requestors under section 552.147 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,



Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/gw

Ref: ID# 693859

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)