



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 22, 2017

Ms. Kristie L. Lewis
HPD Staff Attorney
City of Houston
1200 Travis, 21st Floor
Houston, Texas 77002-6000

OR2017-29170

Dear Ms. Lewis:

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# 694506 (HPD ID No. 17-10422).

The Houston Police Department (the "department") received a request for a specified incident report. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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 . . . 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 reasonably 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, 710 (Tex. 1977). You state the submitted information pertains to a criminal investigation that is inactive pending additional leads. However, we note the submitted information pertains to an aggravated robbery offense. The statute of limitations for aggravated robbery is five years from the date of the offense. *See* Penal Code § 29.03 (aggravated robbery is a felony); *see also* Crim. Proc. Code art. 12.01(4)(A) (indictment or information for robbery must be presented within five years), 12.03(d) ("any offense that bears the title 'aggravated' shall

carry the same limitation period as the primary crime”). More than five years have elapsed since the events giving rise to the submitted information. You have not informed this office any criminal charges were filed within this limitations period. Thus, we find you have failed to demonstrate the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Therefore, the department may not withhold the submitted information under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ This section 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.). We note the information at issue contains the requestor’s date of birth. The requestor has a right of access to her date of birth and the department may not withhold it from him on the basis of common-law privacy. *See* Gov’t Code § 552.023(a) (person or 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 is protected from public disclosure by laws intended to protect person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, other than the requestor’s date of birth, the department must withhold the public citizens’ dates of birth in the submitted information 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 department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, other than the requestor’s date of birth, the department must withhold the public citizens’ dates of birth in the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

the motor vehicle record information we have marked under section 552.130 of the Government Code. The department must release the remaining information.²

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/tdw

Ref: ID# 694506

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a right of access to her own date of birth. *See* Gov't Code § 552.023(a); ORD 481 at 4. We note Open Records Letter No. 2017-00878 (2017) is a previous determination authorizing the City of Houston to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office. *See* Open Records Decision No. 673 (2001). We also note the information being released contains social security numbers. 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).