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ATTORNEY GENERAL OF TEXAS

January 2, 2018

Ms. Julie Pandya Doshier
Counsel for the City of Aubrey
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 North Akard Street, Suite 1800
Dallas, Texas 75201

OR2018-00082

Dear Ms. Doshier:

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# 689892 (Ref. No. 92438).

The City of Aubrey (the "city"), which you represent, received a request for information pertaining to a specified address during a certain time period. You state the city has released some information. You state the city will redact personal e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested

¹Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. See ORD 684.

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 at issue relates to open criminal investigations and release of the information would interfere with the investigations. *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). However, upon review, we note the information at issue relates to alleged harassment offenses that occurred in 2008 and 2009, and to an allegation of interference with child custody that occurred in 2009. The statute of limitations for the harassment offenses is two years from the dates of the offenses. *See* Penal Code § 42.07(a) (harassment); *see also* Crim. Proc. Code art. 12.02(a) (indictment or information for misdemeanor harassment must be presented within two years). The statute of limitations for the interference with child custody offense is three years from the date of the offense. *See* Penal Code § 25.03 (interference with child custody); *see also* Crim. Proc. Code art. 12.01(7) (indictment for felony must be presented within three years). More than two years have elapsed since the events giving rise to the harassment information at issue, more than three years have elapsed since the events giving rise to the interference information at issue, and the city does not inform this office any criminal charges were filed within the limitations periods. Further, the city has not otherwise demonstrated release of the information at issue would interfere with the detection, investigation, or prosecution of crime. Therefore, we find the city has not demonstrated the applicability of section 552.108(a)(1) of the Government Code to information at issue, and the city may not withhold the information on that basis.

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 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 requestor has a right of access to her own date of birth pursuant to section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, with the exception of the requestor’s date of birth, the city must withhold

all public citizens' dates of birth under section 552.101 of the Government Code. As you raise no further exceptions to disclosure, the remaining information must be released.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,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/tdw

Ref: ID# 689892

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a); ORD 481 at 4. Thus, the city must again seek a decision from this office if it receives another request for the same information from another requestor.