November 26, 2018

Ms. Lynne Trumbul
Senior Assistant City Secretary
City of Hutto
401 West Front Street
Hutto, Texas 78634

Dear Ms. Trumbul:

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# 739276.

The City of Hutto (the “city”) received two requests for a specified report. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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 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 marked pertains to an active criminal investigation. Based on this representation, we conclude the 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) (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). Thus, section 552.108(a)(1) is applicable to the information at issue.
However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include dates of birth or motor vehicle record information subject to section 552.130 of the Government Code. See ORD 127 at 3-4. Thus, with the exception of the basic information, the city may withhold the information you marked under section 552.108(a)(1) of the Government Code.1

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.). Accordingly, the city must withhold the dates of birth you 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 you have marked, and the additional motor vehicle record information we marked, under section 552.130 of the Government Code.

In summary, with the exception of the basic information, which must be released, the city may withhold the information you marked under section 552.108(a)(1) of the Government Code. The city must withhold the dates of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information you have marked, and the additional information we marked, under section 552.130 of the Government Code. The city must release the remaining information.

Further, you ask us to issue a previous determination permitting the city to withhold information subject to section 552.108(a)(1) of the Government Code without the necessity of requesting an attorney general opinion. See Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); *Houston Chronicle v. Mattox*, 767 S.W.2d 695, 698 (Tex. 1989) (acknowledging this office has

1As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.
authority under section 552.301 of the Government Code to decide what constitutes a previous determination); Open Records Decision No. 673 (2001) (describing the two types of previous determinations). We note our office issued a previous determination permitting the city to withhold certain information subject to section 552.108(a)(1) of the Government Code in Open Records Decision No. 2018-28758 (2018).

Finally, the city asks this office to issue a previous determination permitting the city to withhold public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. See Gov’t Code § 552.301(a); ORD 673. After due consideration, we have decided to grant the city’s request on this matter. Therefore, this letter ruling authorizes the city to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy. We note common-law privacy is a personal right that lapses at an individual’s death. See Moore v. Charles B. Pierce Film Enters., Inc., 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); see also Open Records Decision Nos. 620 (1993), 272 (1981), 192 (1978). Therefore, this previous determination authorizes the city to withhold dates of birth only of living individuals. This previous determination is not applicable to dates of birth belonging to deceased individuals. We also note a person or a person’s authorized representative has a special right of access under section 552.023 of the Government Code to information that is protected from public disclosure by laws intended to protect the person’s privacy interests. See Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, this previous determination is not applicable to dates of birth requested by a person or the authorized representative of a person whose date of birth is at issue. Furthermore, information filed with a court is not protected by common-law privacy. See Gov’t Code § 552.022(a)(17); Star-Telegram v. Walker, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Accordingly, this previous determination does not authorize the city to withhold under section 552.101 of the Government Code in conjunction with common-law privacy dates of birth contained in court-filed documents. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the city need not ask for a decision from this office again with respect to this type of information. See ORD 673 at 7-8 (listing elements of second type of previous determination under Gov’t Code § 552.301(a)).

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,

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/gw

Ref: ID# 739276

Enc. Submitted documents

c: Requestor
   (w/o enclosures)