



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 29, 2019

Mr. Ricardo Gonzalez
Interim City Attorney
City of Mission
1201 East 8th Street
Mission, Texas 78572

OR2019-02586

Dear Mr. Gonzalez:

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# 755061 (File No. 18-1025).

The City of Mission (the "city") received a request for three specified case reports. 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)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information pertains to criminal investigations that did not result in conviction or

deferred adjudication. Based on your representations, we find the city may withhold the information you have marked under section 552.108(a)(2) of the Government Code.¹

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. 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 requestor has a right of access to her client’s date of birth, and this information may not be withheld from her under common-law privacy. *See* Gov’t Code § 552.023 (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 herself). Accordingly, with the exception of the date of birth belonging to the requestor’s client, the city must withhold the public citizens’ dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city may withhold the information you have marked under section 552.108(a)(2) of the Government Code. With the exception of the date of birth belonging to the requestor’s client, the city must withhold the public citizens’ dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release the remaining information to this requestor.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/>

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

²We note the requestor has a right of access to some of the information being released in this instance. *See* Gov’t Code § 552.023(a); ORD at 4. Accordingly, if the city receives another request for this same information from a different requestor, the city must again seek a ruling from this office.

[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,

A handwritten signature in black ink, appearing to read "Tim Neal". The signature is written in a cursive style with a large, stylized initial "T".

Tim Neal
Assistant Attorney General
Open Records Division

TN/mo

Ref: ID# 755061

Enc. Submitted documents

c: Requestor
(w/o enclosures)