



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 26, 2019

Mr. Joseph Gorfida, Jr.  
Assistant City Attorney  
City of Richardson  
P.O. Box 831078  
Richardson, Texas 75083-1078

OR2019-08291

Dear Mr. Gorfida:

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# 763344 (ORR ID# P000256).

The City of Richardson (the "city") received a request for arrest and incident reports pertaining to a specified incident. You claim the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information at issue includes a breath alcohol analytical report for the requestor. Full information concerning the analysis of the specimen must be made available upon the request of the person who has given the specimen at the request of a peace officer. *See* Transp. Code § 724.018. Here, the requestor is the individual who submitted the specimen. Although you claim the information is excepted from disclosure under section 552.108 of the Government Code, a statutory right of access prevails over general exceptions to public disclosure under the Act. *See* ORDs 613 at 4, 451. Therefore, the breath alcohol analytical report must be released to this requestor pursuant to section 724.018 of the Transportation Code.

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 this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state Exhibit C relates to a pending criminal investigation. Based upon your representation, we conclude release of the information you have marked 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). Accordingly, we find the city may withhold Exhibit C under section 552.108(a)(1) of the Government Code.<sup>1</sup>

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. 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 Third Court of Appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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 requestor has a right of access to his own date of birth pursuant to section 552.023 of the Government Code, and you may not withhold it from him under common-law privacy. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, the city may not withhold the requestor’s date of birth you have marked in Exhibit B 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. We note section 552.130 protects personal privacy. Thus, the requestor has a right of access to her own motor vehicle record information and this information may not be withheld from this requestor under section 552.130 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, the city may not withhold the requestor’s motor vehicle information you have marked in Exhibit B under section 552.130 of the Government Code.

In summary, the breath alcohol analytical report must be released to this requestor pursuant to section 724.018 of the Transportation Code. The city may withhold Exhibit C under

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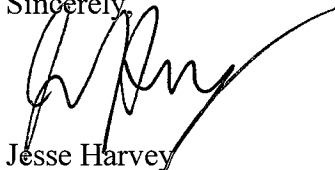
<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

section 552.108(a)(1) of the Government Code. The city must release the remaining information to this requestor.<sup>2</sup>

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](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,



Jesse Harvey  
Assistant Attorney General  
Open Records Division

JH/gw

Ref: ID# 763344

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. If the district attorney's office receives another request for this particular information from a different requestor, then the district attorney's office should again seek a decision from this office. *See* Gov't Code § 552.023(a); ORD 481 at 4. We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Furthermore, we note Open Records Letter No. 2017-00069 is a previous determination issued to the city authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.