



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 1, 2019

Mr. Peter G. Smith  
City Attorney  
City of Richardson  
P.O. Box 831078  
Richardson, Texas 75083-1078

OR2019-11607

Dear Mr. Smith:

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# 770606 (Ref. No. R000181).

The City of Richardson (the "city") received a request for information related to a specified automotive accident. You state you have released some information, including the redacted police officer's crash report pursuant to section 550.065(c-1) of the Transportation Code. *See* Transp. Code § 550.065(c-1) (providing for release of redacted accident report to person or entity not listed under subsection (c)). You claim portions of the submitted information are 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 some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body; [and]

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(3), (17). The submitted information includes information in an account, voucher, or contract relating to the expenditure of public funds that is subject to section 552.022(a)(3) and court-filed documents that are subject to section 552.022(a)(17). This information must be released unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(3), (17). Although you raise sections 552.103 and 552.108 of the Government Code for this information, these exceptions are discretionary in nature and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the city may not withhold any of the information subject to section 552.022, which we have marked, under section 552.103 or section 552.108 of the Government Code. In addition, you seek to withhold the date of birth within the information subject to section 552.022(a)(17), which we marked, under section 552.101 of the Government Code in conjunction with common-law privacy. We note common-law privacy is not applicable to information contained in public court records. *See Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (law cannot recall information once in public domain). Therefore, no portion of the marked court-filed documents may be withheld under section 552.101 in conjunction with common-law privacy. However, as section 552.130 of the Government Code can make information confidential under the Act, we will consider the applicability of this section for the information subject to section 552.022(a). We will also consider your arguments for the information not subject to section 552.022 of the Government Code.

Section 552.108(a) 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: (1) 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 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 Exhibit C relates to a pending criminal investigation, and release of the information would interfere with the investigation and prosecution of the case. Based upon 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 Exhibit C. Accordingly, with the exception of the information subject to section 552.022 of the Government Code, which we have marked, the city may withhold Exhibit C under section 552.108(a)(1) of the Government Code.<sup>1</sup>

You state you will withhold the dates of birth of members of the public pursuant to the previous determination issued in Open Records Letter No. 2017-00069 (2017).<sup>2</sup> Section 552.101 of the Government Code excepts “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.). Accordingly, with the exception of the dates of birth in the court-filed documents subject to section 552.022(a)(17), which we have marked, 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.

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. See Gov't Code § 552.130. Accordingly, the city must withhold the motor vehicle record information you have marked in the remaining information under section 552.130 of the Government Code.

In summary, with the exception of the information subject to section 552.022 of the Government Code, which we have marked, the city may withhold Exhibit C under section 552.108(a)(1) of the Government Code. With the exception of the dates of birth in the court-filed documents subject to section 552.022(a)(17), which we have marked, the city must withhold the public citizens' dates of birth in the remaining information under section

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

<sup>2</sup>Open Records Letter No. 2017-00069 authorizes the city's police department to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general decision.

552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information you have marked in the remaining information under section 552.130 of the Government Code. The city must release the remaining information.

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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/be

Ref: ID# 770606

Enc. Submitted documents

c: Requestor  
(w/o enclosures)