



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 20, 2019

Mr. Matt Wade
Counsel for the City of Plainview
Underwood Law Firm
P.O. Box 16197
Lubbock, Texas 79490

OR2019-13375

Dear Mr. Wade:

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# 766191.

The Plainview Police Department (the "department"), which you represent, received a request for information pertaining to a specified incident. You state you have released some information, including the CR-3 accident report pursuant to section 550.065 of the Transportation Code. *See* Transportation Code § 550.065(c) (providing for release of accident report to person or entity listed under this subsection). You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.1175, and 552.130 of the Government Code.¹ 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,

¹Although the department cites to section 552.117 of the Government Code for portions of the submitted information, we note section 552.1175 of the Government Code is the proper exception to raise for information the department holds in a law enforcement capacity rather than in an employment capacity.

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 at issue relates to a pending investigation and prosecution. Based on your representation and our review, we find 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, 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). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, the identity of an arrestee, a description of the complainant, and a sufficient portion of the narrative to include a detailed description of the offense. *See* ORD 127 at 3-5. Accordingly, with the exception of basic information, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code.²

The department asserts the dates of birth are excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. 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. 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 Third 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.). Thus, the department must withhold the public citizens’ dates of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

confidential. Gov't Code § 552.1175(b). Section 552.1175 applies, in part, to “federal judges and state judges as defined by section 13.0021, Election Code”[.]” *Id.* § 552.1175(a)(13). We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid by a governmental body. *See* Open Records Decision 506 at 5-6 (1988). Accordingly, to the extent the information at issue, which you marked, consists of the personal cellular telephone number of an individual who is subject to section 552.1175(a) and who elects to restrict access to the information in accordance with section 552.1175(b), the department must withhold the information under section 552.1175 of the Government Code; however, to the extent the information is a cellular telephone number, it may only be withheld if a governmental body does not pay for the cellular telephone service. Conversely, if the individual whose information is at issue is not an individual who is subject to section 552.1175(a) or does not elect to restrict access to his information in accordance with section 552.1175(b) this information may not be withheld under section 552.1175.

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 department must withhold the motor vehicle record information you marked under section 552.130 of the Government Code.

In summary, with the exception of basic information, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code. The department must withhold the public citizens' dates of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information at issue consists of the personal cellular telephone number of an individual who is subject to section 552.1175(a) and who elects to restrict access to the information in accordance with section 552.1175(b), the department must withhold the information you marked under section 552.1175 of the Government Code; however, this information may only be withheld if a governmental body does not pay for the cellular telephone service. The department must withhold the motor vehicle record information you marked under section 552.130 of the Government Code. The department 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, 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 "D. Michelle Case", with a long, sweeping flourish extending to the right.

D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/gw

Ref: ID# 766191

Enc. Submitted documents

c: Requestor
(w/o enclosures)