



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 23, 2019

Ms. Julie Pandya Doshier  
Counsel for the City of Farmers Branch  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
500 North Akard Street, Suite 1800  
Dallas, Texas 75201

OR2019-13698

Dear Ms. Doshier:

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# 774095 (Ref. Nos. 107623 and 107636).

The City of Farmer's Branch (the "city"), which you represent, received two requests from the same requestor for information related to a specified incident. 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)(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 have marked relates to a pending criminal 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, the city may withhold the information you have marked 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 chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter E-1 or subchapter F of the Government Code. *See Gov’t Code* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter E-1 or subchapter F of the Government Code. We note Federal Bureau of Investigation (“FBI”) numbers constitute CHRI generated by the FBI. Upon review, we find some of the FBI number you have marked consists of CHRI that is confidential under section 411.083. Accordingly, the city must withhold the FBI number you have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.<sup>2</sup>

We note you have marked some dates of birth in the remaining information for redaction pursuant to the previous determination issued in Open Records Letter No. 2017-05218 (2017).<sup>3</sup> Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. 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

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

<sup>2</sup>We note an individual can obtain her own CHRI from DPS. *See Gov’t Code* § 411.083(b)(3).

<sup>3</sup>Open Records Letter No. 2017-05218 is a previous determination issued to the city’s police department 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.

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.). However, we note the requestor has a right of access to his client's date of birth pursuant to section 552.023 of the Government Code, and this information may not be withheld from him under common-law privacy. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is 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 himself). Thus, the city may not withhold the date of birth belonging to the requestor's client. However, the city must withhold the remaining date of birth you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

You state you will withhold the motor vehicle record information you have marked pursuant to section 552.130(c) of the Government Code.<sup>4</sup> However, we note section 552.130 protects personal privacy. Thus, the requestor has a right of access to his client's motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from her under section 552.130. *See* Gov't Code § 552.023(a); ORD 481 at 4. Thus, the city may not withhold any of the remaining information you have marked under section 552.130 of the Government Code from this requestor.

You state you will withhold the social security number you have marked pursuant to section 552.147(b) of the Government Code.<sup>5</sup> However, we note the requestor has a right to his client's social security number. *See* Gov't Code § 552.023(a); ORD 481 at 4. Accordingly, the city may not withhold the information you have marked under section 552.147 of the Government Code from this requestor.

In summary, the city: (1) may withhold the information you have marked under section 552.108(a)(1) of the Government Code; (2) must withhold the FBI number you have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; (3) must withhold the date of birth you have marked which does not pertain to the requestor's client under section 552.101 of the Government Code in

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<sup>4</sup>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).

<sup>5</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

conjunction with common-law privacy; and (4) must release the remaining information to this requestor.<sup>6</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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/eb

Ref: ID# 774095

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>6</sup>As noted above the requestor has a right of access to his client's otherwise private information. *See* Gov't Code § 552.023(a); ORD 481 at 4 (1987). As noted above, 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, as noted above section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b). Finally, as noted above, Open Records Letter No. 2017-05218 is a previous determination issued to the city's police department 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.