



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 24, 2019

Mr. Zachary Brown
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2019-13866

Dear Mr. Brown:

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# 767120 (PIR# C026172).

The City of Austin (the "city") received a request for all incident reports and records documenting when police officers were called to the Austin Public Library during a stated period of time. You indicate the city will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.124 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹Section 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).

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. As part of the Texas Homeland Security Act (the “HSA”), sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism. Section 418.181 of the Government Code provides,

[t]hose documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

Id. § 418.181; *see also id.* § 421.001 (defining “critical infrastructure” to include all public or private asserts, systems, and functions vital to security, governance, public health and safety, economy, or morale of state or nation). Section 418.182 provides, in relevant part:

(a) [I]nformation . . . in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Id. § 418.182(a). The fact that information may relate to a governmental body’s security concerns does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

We note the submitted information contains still images taken from a surveillance camera video recording. You state the still images at issue were obtained from a library surveillance camera. Further, you state the information you marked “provides detailed information regarding the existence, location, and capabilities of various library security and surveillance systems.” You assert release of the information at issue would “leave the public libraries, their staffs, and patrons vulnerable to acts of crime, violence, or terrorism.” Based on your representations and our review, we find the information at issue relate to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity. *See Tex. Dep’t of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.) (finding confidential under section 418.182 of the HSA video recording containing images recorded by security cameras in Texas Capitol hallway because specifications of security system included cameras’ capabilities and video recording demonstrated those capabilities through characteristics,

quality, and clarity of images recorded). Accordingly, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code.³

Section 552.124 of the Government Code makes confidential, with certain exceptions that are not applicable here, “[a] record of a library or library system, supported in whole or in part by public funds, that identifies or serves to identify a person who requested, obtained, or used a library material or service[.]” Gov’t Code § 552.124(a)-(b); *see also* Open Records Decision No. 100 at 3 (1975) (identifying information of library patrons in connection with object of their attentions is confidential by constitutional law). We note only names, addresses, and other information specifically identifying library patrons may be withheld under section 552.124. *See* Open Records Decision No. 649 at 3 (1996) (confidentiality provisions strictly construed). Upon review, we find the information you marked specifically identifies or serves to identify persons who requested, obtained, or used a library material or service. Accordingly, the city must withhold the information you marked under section 552.124 of the Government Code.

You indicate the city will withhold the dates of birth you have redacted pursuant to Open Records Letter No. 2017-13283 (2017).⁴ Section 552.101 of the Government Code also 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.). However, we note the dates of birth at issue pertain to individuals who will be de-identified; thus, their privacy interests will be protected. Therefore, the city may not withhold the dates of birth you redacted under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code. The city must withhold the information you marked under section 552.124 of the Government Code. The city must release the remaining information.

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

⁴Open Records Letter No. 2017-13283 is a previous determination issued to the city authorizing it to withhold certain public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

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,



Blake Brennan
Attorney
Open Records Division

BB/mo

Ref: ID# 767120

Enc. Submitted documents

c: Requestor
(w/o enclosures)