



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 29, 2019

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
450 Cypress Creek Road
Cedar Park, Texas 78613

OR2019-14092

Dear Ms. Quinn:

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# 769191 (Ref. No. 19-724).

The City of Cedar Park (the "city") received two requests for information pertaining to a specified motor vehicle accident. We understand you will withhold social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. Section 552.101 encompasses information subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator's accident report), .062 (officer's accident report). An accident report is privileged and for the confidential use of the Texas Department of

¹Section 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).

Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity shall release an accident report in accordance with subsections (c) and (c-1). *Id.* § 550.065(c), (c-1). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c). In this instance, the requestors are persons listed under section 550.065(c). Thus, the city must release the accident report to these requestors pursuant to section 550.065(c) 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 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 pertains to an active criminal investigation or prosecution. Based on your 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, the city may withhold Exhibit C under section 552.108(a)(1) of the Government Code.

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.).

We note the second requestor has a right of access to her clients’ dates of birth pursuant to section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a) (“[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the 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 individuals request information concerning themselves). Upon review, with the exception of the dates of birth belonging to her clients, the city must withhold all public citizens’ dates of birth from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

We further note the first requestor is the spouse of one of the individuals whose date of birth is at issue and may have a right of access to his spouse’s date of birth under section 552.023 of the Government Code as his authorized representative. *See* Gov’t Code § 552.023(a). Therefore, to the extent the first requestor is acting as the authorized representative of his

spouse, the city may not withhold his spouse's date of birth under section 552.101 on the basis of common-law privacy. Conversely, to the extent the requestor is not acting as the authorized representative of his spouse, the city must withhold his spouse's date of birth, under section 552.101 of the Government Code on the basis of common-law privacy. In either event, the city must withhold the remaining dates of birth you marked in the information at issue from the first requestor 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.

We note the second requestor has a right of access to her client's motor vehicle information pursuant to section 552.023 of the Government Code. *See Id.* § 552.023(a); ORD 481 at 4. Upon review, with the exception of the motor vehicle information belonging to her client, the city must withhold motor vehicle information you marked from the second requestor under section 552.130 of the Government Code. Some of the marked information pertains to the first requestor's spouse. If the first requestor is acting as the authorized representative of his spouse, then the requestor has a right of access to his spouse's motor vehicle record information under section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Thus, to the extent the first requestor is acting as his spouse's authorized representative, the city must release to the first requestor the marked information pertaining to his wife, but withhold the remaining marked information under section 552.130 of the Government Code. To the extent the first requestor is not acting as his spouse's authorized representative, the city must withhold the information you marked under section 552.130 of the Government Code.

In summary, the city must release the submitted accident report to these requestors pursuant to section 550.065(c) of the Transportation Code. The city may withhold Exhibit C under section 552.108(a)(1) of the Government Code. To the extent the first requestor is acting as the authorized representative of his spouse, the city may not withhold his spouse's date of birth under section 552.101 on the basis of common-law privacy. Conversely, to the extent the requestor is not acting as the authorized representative of his spouse, the city must withhold his spouse's date of birth, under section 552.101 of the Government Code on the basis of common-law privacy. In either event, the city must withhold the remaining dates of birth you marked in the information at issue from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the dates of birth belonging to her clients, the city must withhold all public citizens' dates of birth from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the first requestor is acting as his spouse's authorized representative, the city must release to the first requestor the marked information pertaining to his wife, but withhold the remaining marked information under section 552.130 of the Government Code. To the extent the first requestor is not acting as

his spouse's authorized representative, the city must withhold the information you marked under section 552.130 of the Government Code. With the exception of the motor vehicle information belonging to her client, the city must withhold motor vehicle information you marked from the second requestor under section 552.130 of the Government Code. The remaining information must be released.²

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,



Jesse Harvey
Assistant Attorney General
Open Records Division

JH/be

Ref: ID# 769191

Enc. Submitted documents

c: 2 Requesters
(w/o enclosures)

²The requestor has a right of access to some of the information being released in this instance. See Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the city receives another request for the same information from a different requestor, the city must again seek a decision from this office.