



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 10, 2019

Mr. Robert L. Galligan
Counsel for the City of Mission
Jones, Galligan, Key & Lozano, L. L. P.
P. O. Drawer 1247
Weslaco, Texas 78599-1247

OR2019-18727

Dear Mr. Galligan:

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# 782501.

The City of Mission (the "city"), which you represent, received a request for information pertaining to a specified incident. You claim some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 (1986). You state the submitted information pertains to a criminal investigation that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) 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 186-187; *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, a sufficient portion of the narrative to include a detailed description of the incident.

See ORD 127 at 3-4. Accordingly, with the exception of basic information, the city may withhold the information you marked under section 552.108(a)(2) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ 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 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

information at issue includes the requestor’s spouse’s date of birth. Section 552.023(a) of the Government Code states that a person or a person’s authorized representative has a special right of access to information that is excepted from public disclosure under laws intended to protect that person’s privacy interest. See Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, the requestor has a right of access to her spouse’s date of birth if she is acting as the authorized representative of her spouse. See Gov’t Code § 552.023(a); ORD 481 at 4. Therefore, if the requestor is acting as the authorized representative of her spouse, then the city may not withhold the requestor’s spouse’s date of birth, which we marked, under section 552.101 in conjunction with common-law privacy. However, if the requestor is not acting as the authorized representative of her spouse, then the city must withhold the date of birth we marked under section 552.101 in conjunction with common-law privacy.

In summary, with the exception of basic information, which must be released, the city may withhold the information you marked under section 552.108(a)(2) of the Government Code. If the requestor is not acting as the authorized representative of her spouse, then the city must withhold the date of birth we marked under section 552.101 in conjunction with common-law privacy. 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'KH', with a horizontal line extending to the right.

Kieran Hillis
Assistant Attorney General
Open Records Division

KH/eb

Ref: ID# 782501

Enc. Submitted documents

c: Requestor
(w/o enclosures)