



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 15, 2019

Ms. P. Armstrong
Assistant City Attorney
City of Dallas
1400 South Lamar, 6th Floor, 6W
Dallas, Texas 75215

OR2019-19150

Dear Ms. Armstrong:

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# 775328 (ORR No. D008759-032519).

The Dallas Police Department (the "department") received a request for specified information pertaining to a specified investigation. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code.¹ You also state you notified the Dallas County District Attorney's Office (the "district attorney's office") of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the district attorney's

¹We note, and you acknowledge, the department did not comply with the requirements of section 552.301 of the Government Code in providing the information at issue. *See* Gov't Code § 552.301(b), (e). Nonetheless, we note sections 552.101, 552.130, and 552.136 of the Government Code and the interests of a third party can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

office. We have considered the submitted arguments and reviewed the submitted representative sample of information.²

Initially, we note some of the submitted information is not responsive to the present request because it does not pertain to any of the information requested by the requestor. This ruling does not address the public availability of the non-responsive information, which we marked, and the department need not release it in response to this request.

Next, you state some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2019-10480 (2019). In that ruling, we determined (1) the body worn camera video was not properly requested pursuant to chapter 1701 of the Occupations Code, (2) the department may withhold the information you marked under section 552.108(a)(1) of the Government Code, (3) the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy, (4) the department must withhold the information you marked under section 552.130 of the Government Code, and (5) the department must release the remaining information. We note in the instant request, the requestor properly requests the body worn camera recordings at issue. *See* Occ. Code § 1701.661(a). Therefore, the facts and circumstances have changed with respect to the body worn camera recordings at issue. Thus, the department may not rely on Open Records Letter No. 2019-10480 with respect to this information. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, you state the law, facts, or circumstances on which the prior ruling was based have not changed with respect to the remaining information at issue. Thus, the department must continue to rely on Open Records Letter No. 2019-10480 as a previous determination and withhold or release the information at issue in accordance with that ruling. However, to the extent the information in the current request is not encompassed by the prior ruling, we will consider the exceptions you raise for this information and the body worn camera recordings.

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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must explain how and why the release

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 that those records contain substantially different types of information than that submitted to this office.

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). The district attorney's office states the submitted information relates to a criminal investigation or prosecution that is pending with the district attorney's office. Based upon this representation, we conclude the release of the information you marked would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publishing 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) of the Government Code is applicable to the information you marked and may be withheld on that basis on behalf of the district attorney's office.³

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by this state or another state or country. Gov't Code § 552.130(a)(1), (2). Accordingly, the department must withhold the motor vehicle record information you marked under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code states “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. *See Open Records Decision No. 684 at 9 (2009)*. Thus, the department must withhold the insurance policy number you marked under section 552.136 of the Government Code.

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 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 citizen's date of birth, which you marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of the body worn camera recordings that are now properly requested, for the requested information that is identical to the information previously requested and ruled upon by this office, the department must continue to rely on Open

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

Records Letter No. 2019-10480 as a previous determination and withhold or release the identical information in accordance with that ruling. The department may withhold the information you marked under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office. The department must withhold the motor vehicle record information you marked under section 552.130 of the Government Code. The department must withhold the insurance policy number you marked under section 552.136 of the Government Code. The department must withhold the public citizen's date of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining responsive 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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/jxd

Ref: ID# 775328

Enc. Submitted documents

c: Requestor
(w/o enclosures)