



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 7, 2019

Mr. David V. Overcash
Counsel for the City of Aubrey
Wolfe, Tidwell & McCoy, LLP
2591 Dallas Parkway, Suite 300
Frisco, Texas 75034

OR2019-21721

Dear Mr. Overcash:

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# 779146 (City File No. C04006PIR20190515-01).

The City of Aubrey (the "city"), which you represent, received a request for a specified incident report. You state you have released some information to the requestor. You claim portions of the submitted information are 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. This section 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 city must withhold the public citizens' dates of birth you have marked and the additional date of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108 of the Government Code provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (2). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the information at issue would interfere with law enforcement. *See id.* § 552.108(a)(1); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). We note section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App. —El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982).

You assert section 552.108(a)(1) for portions of the submitted information. However, you state the information at issue “is information kept by law enforcement/prosecutors as part of one or more investigations which were either still pending or had concluded in a result other than a conviction or deferred adjudication on the date the request was received.” Thus, we find you have failed to demonstrate the information at issue relates to an ongoing criminal case or a closed criminal case that did not result in conviction or deferred adjudication. Accordingly, we find you have failed to demonstrate the applicability of either section 552.108(a)(1) or section 552.108(a)(2) to the information at issue. Therefore, the city may not withhold any portion of the submitted information under section 552.108 of the Government Code.

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. Accordingly, the city must withhold the motor vehicle record information you have marked and the additional information we have marked under section 552.130 of the Government Code.

In summary, the city must: (1) withhold the public citizen's dates of birth you have marked and the additional date of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the motor vehicle record information you have marked and the additional information we have marked under section 552.130 of the Government Code; and (3) release the remaining information.

Finally, although you ask this office to issue a previous determination permitting the city to withhold public citizens' dates of birth, we note that in Open Records Letter No. 2018-03218 (2018) this office already issued a previous determination authorizing the city to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. *See id.* § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301 (a) of the Government Code).

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 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/mo

Ref: ID# 779146

Enc. Submitted documents

c: Requestor
(w/o enclosures)