



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

August 7, 2019

Ms. Deanne Lin  
Assistant County Attorney  
Harris County  
1019 Congress, 15th Floor  
Houston, Texas 77002

OR2019-21725

Dear Ms. Lin:

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# 779577 (Ref. Nos. 19PIA0408 and 19PIA0412).

The Office of the Harris County Constable, Precinct 4 (the "constable's office") received two requests from different requestors for information pertaining to a specified incident involving a named individual. You indicate the constable's office has released some information to the requestors. You claim 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 of the Government Code provides, in pertinent 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 release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See Gov't Code* §§ 552.108(a)(2), .301(e)(1)(A).

You assert the submitted information is excepted from disclosure under section 552.108(a)(1) because the information “relate[s] directly to an open and ongoing criminal investigation.” However, you also assert the information at issue is excepted from disclosure under section 552.108(a)(2) because it “pertains to a closed investigation that concluded in a result other than conviction or deferred adjudication[.]” Based on these conflicting representations, we are unable to determine if the information at issue relates to a pending criminal investigation or a closed investigation that did not result in conviction or deferred adjudication. Thus, we find you have failed to demonstrate the applicability of section 552.108(a)(1) or section 552.108(a)(2) to the information at issue. Therefore, the constable’s office may not withhold any portion of the submitted information under section 552.108 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.”<sup>1</sup> *Id.* § 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.). Accordingly, the constable’s office must withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator’s or driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See Gov't Code* § 552.130. Accordingly, the constable’s office must withhold all visible license plates and registration stickers within the submitted video recordings and the information we marked under section 552.130 of the Government Code.

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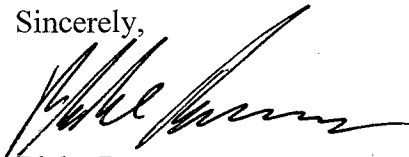
<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision* Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the constable's office must withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy. The constable's office must withhold all visible license plates and registration stickers within the submitted video recordings and the information we marked under section 552.130 of the Government Code. The constable's office 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 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,



Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/mo

Ref: ID# 779577

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)