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ATTORNEY GENERAL OF TEXAS

August 20, 2019

Ms. Anastasia Broadfoot
Texas Alcoholic Beverage Commission
Office of the General Counsel
P. O. Box 13127
Austin, Texas 78711-3137

OR2019-23126

Dear Ms. Broadfoot:

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# 781353 (ORR# R001215).

The Texas Alcoholic Beverage Commission (the "commission") received a request for all records pertaining to a specified location during a specified time period. The commission states it is releasing some of the requested information. The commission claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the commission claims and reviewed the submitted information.

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). The commission states complaint number 3168370 pertains to an active criminal investigation or prosecution by the commission's Enforcement Division. Based on this 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, section 552.108(a)(1) is applicable to complaint number 3168370.

Section 552.108 may be invoked by any proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where an agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. The commission informs us complaint number 3144761 and citation number 884533 pertain to an active investigation and prosecution by Hidalgo County (the “county”). However, the commission has not provided a representation from the county, or any other law enforcement entity, that release of the information at issue would interfere with the detection, investigation, or prosecution of crime. Therefore, the commission may not withhold complaint number 3144761 and citation number 884533 under section 552.108(a)(1) of the Government Code.

Portions of complaint number 3144761 and citation number 884533 are subject to section 552.101 of the Government Code.¹ 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 Third Court of Appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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 commission must withhold all public citizens’ dates of birth within complaint number 3144761 and citation number 884533 under section 552.101 of the Government Code in conjunction with common-law privacy.

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. *See* 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) (governmental body must provide comments explaining why exceptions raised should apply

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

to information requested). The commission states complaint number 3157651 pertains to a closed case by the commission's Enforcement Division that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to complaint number 3157651.

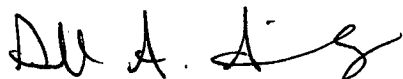
However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the commission may withhold complaint number 3168370 under section 552.108(a)(1) of the Government Code and may withhold complaint number 3157651 under section 552.108(a)(2) of the Government Code.

In summary, with the exception of the basic information, the commission may withhold complaint number 3168370 under section 552.108(a)(1) of the Government Code and may withhold complaint number 3157651 under section 552.108(a)(2) of the Government Code. The commission must withhold all public citizens' dates of birth within complaint number 3144761 and citation number 884533 under section 552.101 of the Government Code in conjunction with common-law privacy. The commission 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 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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/jxd

Ref: ID# 781353

Enc. Submitted documents

c: Requestor
(w/o enclosures)