



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 21, 2019

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
450 Cypress Creek Road
Cedar Park, Texas 78613

OR2019-23230

Dear Ms. Quinn:

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# 782035 (Ref. Nos. 19-1156 and 19-1265).

The City of Cedar Park (the "city") received two requests from the same requestor for information regarding a specified incident. You state the city does not possess information responsive to a portion of the request.¹ You state the city will release the information marked as Exhibit C. 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 representative sample of information.²

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

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S. W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

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

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). 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); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state Exhibits B and D relate to a pending prosecution, and release of that information would interfere with the prosecution of the case. Based upon 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, the city may withhold Exhibits B and D under section 552.108(a)(1) of the Government Code.³

Section 552.101 of the Government Code excepts “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. *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.). Accordingly, the city must withhold all public citizens’ dates of birth in Exhibit C under section 552.101 of the Government Code in conjunction with common-law privacy.

You state the city will withhold the motor vehicle record information you marked under section 552.130(c) of the Government Code.⁴ However, we note there is additional unmarked motor vehicle record information in Exhibit C, which you state the city has released. 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*. Upon review, we find the information we marked and indicated consists of motor vehicle record information subject to section 552.130. We note, however, section 552.130 protects personal privacy. We further note the requestor represents the insurance provider for the individual whose information is at issue. As such, the requestor, if acting as the insured individual’s authorized representative, has a right of access to the insured individual’s motor vehicle

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

⁴Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov’t Code § 552.130(c)*. If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

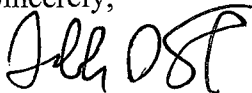
record information. *See id.* § 552.023(a) (“[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). Therefore, to the extent the requestor is acting as the insured individual’s authorized representative, the city may not withhold the information we marked under section 552.130 of the Government Code. To the extent the requestor is not acting as the insured individual’s authorized representative, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. In either situation, the city must withhold the motor vehicle record information you marked and the additional motor vehicle record information we indicated under section 552.130 of the Government Code.

In summary, the city may withhold Exhibits B and D under section 552.108(a)(1) of the Government Code. The city must withhold all public citizens’ dates of birth in Exhibit C under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the requestor is not acting as the insured individual’s authorized representative, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The city must withhold the motor vehicle record information you marked and we indicated under section 552.130 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,



Deborah Southerland

Attorney

Open Records Division

DS/jxd

Ref: ID# 782035

Enc. Submitted documents

c: Requestor
(w/o enclosures)