



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 25, 2019

Mr. Paul E. Fulbright
Assistant District Attorney
Navarro County
300 West 3rd Avenue, Suite 301
Corsicana, Texas 75110

OR2019-26838

Dear Mr. Fulbright:

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# 787997.

Navarro County (the "county") received a request for four points of information regarding an incident involving the requestor's client.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.² We have considered the claimed exceptions and reviewed the submitted representative sample of information.³

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

¹ You state, and provide documentation demonstrating, the county sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request); *see also* *City of Dallas v. Abbott*, 304 S. W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

² Although the county does not raise sections 552.101 and 552.147 of the Government Code in its brief, we understand you to raise these exceptions based on the substance of your arguments.

³ We 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.

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 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 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). 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 conviction or deferred adjudication. *See Gov't Code* §§ 552.108(a)(2), .301(e)(1)(A).

You contend the submitted information is excepted from disclosure under sections 552.108(a)(1) and 552.108(a)(2). However, you do not inform us the information at issue pertains to a specific ongoing criminal investigation or prosecution, nor have you explained how its release would interfere in some way with the detection, investigation, or prosecution of crime. Thus, we find you failed to demonstrate the applicability of section 552.108(a)(1) to the information at issue. Further, you do not inform us the submitted information relates to an investigation that concluded in a result other than conviction or deferred adjudication. Thus, we find you failed to demonstrate the applicability of section 552.108(a)(2) to the information at issue. Therefore, the county may not withhold the submitted information under section 552.108(a)(1) or section 552.108(a)(2) of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. The court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101 of the Government Code. *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.). We note the names, addresses, and telephone numbers of members of the public are generally not highly intimate or

embarrassing. *See* Open Records Decision Nos. 551 at 3 (1990). Upon review, we find no portion of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, none of the submitted information is confidential under common-law privacy, and the county may not withhold it under section 552.101 of the Government Code on that ground.

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. We note section 552.130 protects personal privacy. Thus, the requestor has a right of access to her client's motor vehicle record information under section 552.023 of the Government Code and it may not be withheld under section 552.130. *See id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). However, because we are unable to determine whether the information at issue belongs to the requestor's client, we must rule conditionally. To the extent the motor vehicle record information we indicated belongs to the requestor's client, the county must release it under section 552.023 of the Government Code. To the extent the motor vehicle record information we indicated does not belong to the requestor's client, the county must withhold it under section 552.130 of the Government Code.

Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. *See* Gov't Code § 552.147. Upon review, we find you failed to demonstrate the applicability of section 552.147 to any of the remaining information. Therefore, the county may not withhold any of the remaining information under section 552.147 of the Government Code.

In summary, to the extent the motor vehicle record information we indicated belongs to the requestor's client, the county must release it under section 552.023 of the Government Code; however, to the extent the motor vehicle record information we indicated does not belong to the requestor's client, the county must withhold it under section 552.130 of the Government Code. The county must release the remaining information.⁴

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.

⁴ We note the requestor may have a right of access to some of the motor vehicle record information being released. *See* Gov't Code § 552.023; *see also* ORD 481 at 4. We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 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).

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,



James M. Graham
Assistant Attorney General
Open Records Division

JMG/mo

Ref: ID# 787997

Enc. Submitted documents

c: Requestor
(w/o enclosures)