



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 27, 2019

Mr. Austin R. Beck
Counsel for the City of Helotes
Davidson, Troilo, Ream & Garza, P.C.
601 NW Loop 410, Suite 100
San Antonio, Texas 78216-5511

OR2019-27178

Dear Mr. Beck:

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# 788069.

The City of Helotes (the "city"), which you represent, received two requests from the same requestor for all class C misdemeanor traffic citations issued during specified periods of time. The city claims the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.¹

Initially, we note some of the submitted information is not responsive to the request for information because it does not consist of a class C misdemeanor traffic citation. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release this information in response to this request.

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

¹We 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.

(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). Subsection 552.108(a)(1) protects information that pertains to a pending criminal investigation or prosecution. Subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body claiming subsection 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). A governmental body claiming subsection 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that concluded in a final result other than conviction or deferred adjudication. The city informs us the responsive citations pertain to investigations that either are pending prosecution in municipal court or did not result in conviction or deferred adjudication. However, the city did not label or otherwise identify which of the submitted citations pertains to a pending criminal investigation or prosecution, and which pertains to a concluded investigation or prosecution that did not result in conviction or deferred adjudication. *See id.* § 552.301(e)(2) (governmental body must label copy of information at issue to indicate which exceptions apply to which parts of the information). Therefore, we find the city has not established any of the submitted information is excepted from disclosure under subsection 552.108(a)(1) or 552.108(a)(2) 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.” 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 city must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

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

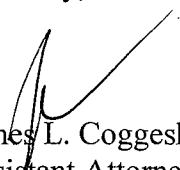
excepted from public release. *See* Gov't Code § 552.130. The city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the city must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold the information we have marked under section 552.130 of the Government Code. The city must release the remaining responsive 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 788069

Enc. Submitted documents

c: Requestor
(w/o enclosures)