



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 3, 2019

Mr. Thomas Royce Hansen  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, Third Floor  
Fort Worth, Texas 76102-6311

OR2019-27796

Dear Mr. Hansen:

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# 789167 (ID# W087924).

The City of Fort Worth (the "city") received a request for a specified report. The city claims a portion of the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the city claims and reviewed the submitted information.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). A governmental body claiming section 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706. Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 at 327 (Tex. App.—Austin 2002, no pet.). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation

or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You argue the information you have marked would identify an underage minor agent that participated in a city police department sting operation in the unlawful selling of alcohol to a minor, and that release of such information would interfere with law enforcement and crime prevention. Accordingly, with the exception of the information we have marked for release, the city may withhold the information you marked, as well as the information we marked, under section 552.108(b)(1) of the Government Code. However, we find you have not demonstrated release of any of the remaining information at issue would interfere with law enforcement or crime prevention. Accordingly, the city may not withhold any of the remaining information under section 552.108(b)(1).

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.<sup>1</sup> 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 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.). Upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note information belonging to individuals who have been de-identified may not be withheld under common-law privacy as the de-identified individuals’ privacy interests are, thus, protected. Thus, with the exception of the requestor’s date of birth, to which the requestor has a right of access pursuant to section 552.023 of the Government Code, the city must withhold all identifiable public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. *See* Gov’t Code § 552.023(a) (“person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to 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 individual requests information concerning herself).

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<sup>1</sup> The Office of the Attorney General will raise mandatory exceptions like sections 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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.<sup>2</sup> See Gov't Code § 552.130. We note the remaining information contains driver's license information that is subject to section 552.130. We note, because section 552.130 protects privacy interests, the requestor has a right of access to his own driver's license information pursuant to section 552.023 of the Government Code. See *id.* § 552.023(a); ORD 481 at 4. However, the city must withhold the information we have marked under section 552.130 of the Government Code.

To summarize, with the exception of the information we have marked for release, the city may withhold the information you marked, as well as the information we marked, under section 552.108(b)(1) of the Government Code. The city must withhold all identifiable public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.<sup>3</sup>

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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/gw

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<sup>2</sup> The Office of the Attorney General will raise mandatory exceptions like sections 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup> We note the information being released contains the requestor's date of birth, social security number, and driver's license information, to which the requestor has a right of access under section 552.023 of the Government Code. See Gov't Code § 552.023(a). If the city receives another request for this particular information from a different requestor, then the city should again seek a decision from this office.

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)