



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 9, 2019

Ms. Susan K. Johnson  
Clerk  
Lavon Police Department  
P.O. Box 340  
Lavon, Texas 75166

OR2019-28383

Dear Ms. Johnson:

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# 790299.

The Lavon Police Department (the "department") received a request for information pertaining to a specified incident involving a named individual. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the department has redacted portions of the responsive information. We understand the department has redacted motor vehicle record information pursuant to section 552.130(c) of the Government Code, social security number pursuant to section 552.147(b) of the Government Code, and dates of birth pursuant to Open Records Letter No. 2018-04244 (2018).<sup>1</sup> However, the department has also redacted additional information. Pursuant to section 552.301 of the Government Code, a governmental body

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<sup>1</sup> 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). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b). Open Records Letter No. 2018-04244 is a previous determination issued to the department authorizing it to withhold certain public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See* Gov't Code § 552.301(a), (e)(1)(D). You do not assert, nor does our review of the records indicate, the department has been authorized to withhold this information without seeking a ruling from this office. *See id.* § 552.301(a); *see also* Open Records Decision No. 673 (2000). As such, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. However, because we can discern the nature of the redacted information, being deprived of the information does not inhibit our ability to make a ruling. Nonetheless, in the future, the department must not redact information from the information it submits to this office unless it is authorized to do so by statute or the information is the subject of a previous determination under section 552.301 of the Government Code. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See* Gov't Code § 552.302.

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. *Id.* § 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); Open Records Decision No. 434 (1986). You state the submitted information pertains to a concluded criminal investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the information at issue.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov't Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist] 1975). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the basic information, the department may generally withhold the submitted information under section 552.108(a)(2) of the Government Code.

In this instance, we note the requestor is a representative of the Plano Independent School District (the “district”) and may have a right of access to the submitted information. Section 411.097 of the Government Code provides, in pertinent part:

(a) A school district . . . is entitled to obtain from the [Texas Department of Public Safety (“DPS”)] criminal history record information [(“CHRI”)] maintained by the [DPS] that the district . . . is required or authorized to obtain under Subchapter C, Chapter 22, Education Code, that relates to a person who is:

(1) an applicant for employment by the district[;]

(2) an employee of or an applicant for employment with a public or commercial transportation company that contracts with the district . . . to provide transportation services if the employee drives or the applicant will drive a bus in which students are transported or is employed or is seeking employment as a bus monitor or bus aide on a bus in which students are transported; or

(3) an employee of or applicant for employment by an entity that contracts to provide services to a school district . . . as provided by Section 22.0834 or 22.08341, Education Code.

(b) A school district . . . is entitled to obtain from the [DPS CHRI] maintained by the [DPS] that the district . . . is required or authorized to obtain under Subchapter C, Chapter 22, Education Code, that relates to a person who is a volunteer, student teacher, or employee of the district[.]

Gov't Code § 411.097(a)-(b); *see* Educ. Code. § 22.083(a)(1), (a-1) (2) (authorizing school district to obtain from any law enforcement agency CHRI relating to school district employee). In addition, section 411.087(a) of the Government Code provides, in pertinent part:

[A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [ [DPS CHRI] maintained by the [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

Gov't Code § 411.087(a)(2). We note CHRI is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2). Thus, the district may have a right of access to CHRI about the named individual contained in the submitted information. In this instance, we are unable to determine whether the named individual is one of the types of individuals listed in section 411.097(a) or section 411.097(b) of the Government Code. *See id.* § 411.097(a)-(b). Thus, if the named individual is one of the types of individuals listed in section 411.097(a) or section 411.097(b) of the Government Code, then the department must release information to this requestor that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific

statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, with the exception of basic information, which must also be released, the department may withhold the remaining information under section 552.108(a)(2) of the Government Code. However, if the named individual is not one of the types of individuals listed in section 411.097(a) or section 411.097(b) of the Government Code, then, with the exception of basic information, which must be released, the department may withhold the submitted information under section 552.108(a)(2) 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,



Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/mo

Ref: ID# 790299

Enc. Submitted documents

c: Requestor  
(w/o enclosures)