



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 9, 2019

Lieutenant William Ryan
Record Division
Pharr Police Department
1900 South Cage Boulevard
Pharr, Texas 78577

OR2019-28419

Dear Lt. Ryan:

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# 791012 (ORR# P000887).

The Pharr Police Department (the "department") received a request for report numbers 14-42722, 14-52072, and 19-25673. The department claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the department claims and reviewed the submitted information.

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

(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:

...

(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[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code §§ 552.108(a)(2), (b)(2). A governmental body claiming section 552.108(a)(2) or section 552.108(b)(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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The department states the submitted information pertains to a criminal case that “has not resulted in a conviction or deferred adjudication.” We note sections 552.108(a)(2) and (b)(2) are applicable only if the information at issue is related to a concluded criminal case “that *did not* result in conviction or deferred adjudication[.]” *See id.* § 552.108(a)(2), (b)(2) (emphasis added). Thus, we find the department has failed to demonstrate the applicability of sections 552.108(a)(2) and (b)(2) to the submitted information, and the department may not withhold any of the submitted information on either of these bases.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ 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, with the exception of the requestor's and her minor children's dates of birth, to which the requestor has a right of access pursuant to section 552.023 of the Government Code, the department must withhold all 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).

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. Accordingly, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

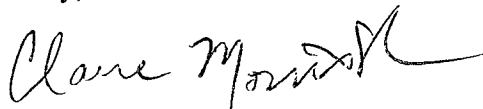
¹ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, with the exception of the requestor's and her minor children's dates of birth, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The department must release the remaining information to this requestor.²

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/gw

Ref: ID# 791012

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² The information being released contains social security numbers. 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* Gov't Code § 552.147(b). We note the requestor has a right of access to some of the information being released. *See* Fam. Code § 261.201(k) (parent of child victim of abuse or neglect who is not suspected of abuse or neglect has right of access to information otherwise confidential under section 261.201(a) of the Family Code), (1)(2) (providing any information excepted from required disclosure under the Act or other law must be withheld from disclosure); *see also* Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the department receives another request for the same information from a different requestor, the department must again seek a decision from this office.