



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 14, 2019

Mr. Michael L. Martin
Counsel for the Town of Prosper
Brown & Hoffmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2019-32198

Dear Mr. Martin:

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# 796776 [Prosper ID No. 2019-608].

The Prosper Police Department (the "department"), which you represent, received a request for information pertaining to a specified offense from a specified time period, including the names of the officers who issued citations for each offense. You assert the submitted information is not subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, the department states the submitted citations were transferred to the City of Prosper's municipal court for adjudication. Section 552.003(b) of the Government Code excludes the judiciary from the Act. Therefore, the Act neither authorizes information held by the judiciary to be withheld nor requires that it be disclosed. *See* Open Records Decision No. 25 (1974). Accordingly, to the extent the information at issue is maintained solely by the judiciary, it is not subject to release under the Act and need not be released in response to the present request.¹ *See* Gov't Code § 552.0035 (access to information maintained by

¹We note records of the judiciary may be public under other sources of law. *See, e.g.*, Gov't Code § 29.007(d)(4) (complaints filed with municipal court clerk); *see id.* § 29.007(f) (municipal court clerks shall perform duties prescribed by law for county court clerk); Loc. Gov't Code § 191.006 (records belonging to office of county clerk shall be open to public unless access restricted by law or court order); *see also* *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally

or for judiciary is governed by rules adopted by supreme court); Tex. R. Jud. Admin. 12 (public access to judicial records). However, to the extent the information at issue is maintained by the department, it is subject to the Act and we will consider your claimed exception to its disclosure.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). 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). You state the submitted information pertains to a pending criminal investigation or prosecution. We note the submitted information consists of citations. Because copies of the citations were provided to the individuals who were cited, we find release of the citations will not interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). We therefore conclude the submitted citations may not be withheld under section 552.108(a)(1) of the Government Code.

We note the citations contain information subject to sections 552.101 and 552.130 of the Government Code.² 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 court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *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 department 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. Accordingly, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

considered public and must be released); Attorney General Opinions DM-166 (1992) at 2-3 (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974).

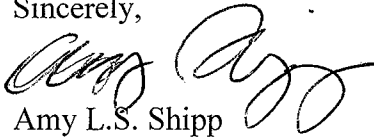
²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, to the extent the submitted citations are maintained solely by the judiciary, such information is not subject to the Act. To the extent copies of the submitted citations are also maintained by the department, the department must (1) withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the motor vehicle record information we marked under section 552.130 of the Government Code; and (3) release the remaining 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/mo

Ref: ID# 796776

Enc. Submitted documents

c: Requestor
(w/o enclosures)