



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 12, 2019

Sergeant Guadalupe Garcia
Pharr Police Department
1900 South Cage
Pharr, Texas 78577-6751

OR2019-35139

Dear Sergeant Garcia:

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# 801591 (ORR# P000966).

The Pharr Police Department (the "department") received a request for a specified incident report. The department claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]"¹ 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 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). The department states the submitted information relates to a pending criminal investigation or prosecution. However, the submitted information pertains to the investigation of misdemeanor assault. *See* Penal Code § 22.01(a)(1) (assault). The statute of limitations for misdemeanor assault is two years from the date of the offense. *See* Crim. Proc. Code art. 12.02(a) (indictment or information for misdemeanor assault must be presented within two years). More than two years have elapsed since the underlying incident for the alleged assault occurred. The department does not inform us any criminal charges were filed within the limitations period

¹ We understand the department to raise section 552.108(a)(1) based on its arguments.

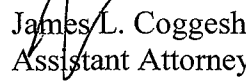
for this case. Thus, we find the department has failed to demonstrate release of this information would interfere with the detection, investigation, or prosecution of crime. See Gov't Code § 552.108(a)(1). Accordingly, the department may not withhold the submitted information under section 552.108(a)(1) 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.”² 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.). The requestor has a right of access to her own date of birth pursuant to section 552.023 of the Government Code. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Nevertheless, the department must withhold the remaining date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The department must 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/rm

² The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

Ref: ID# 801591

Enc. Submitted documents

c: Requestor
(w/o enclosures)