



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 19, 2019

Ms. Caitlin Sedano  
Administrative Assistant  
Harker Heights Police Department  
402 Indian Trail  
Harker Heights, Texas 76548

OR2019-36031

Dear Ms. Sedano:

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# 803388.

The Harker Heights Police Department (the "department") received a request for information pertaining to a specified arrest. 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.

Initially, we note the submitted documents indicate the department previously released some of the requested information to a member of the public in response to an earlier request for this information under the Act. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law. *See Gov't Code 552.007; Open Records Decision Nos. 518 at 3 (1989), 400 at 2 (1983).* Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests. *See Open Records Decision Nos. 665 at 5 (2000) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver).* As such, section 552.108 does not expressly prohibit the release of the submitted information or make the information confidential. Accordingly, to the extent the department previously released any of the submitted information, the department may not withhold such previously-released information under section 552.108. To the extent the

department did not previously release the information at issue, we will address the department's argument to withhold this information under the Act.

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[.]” 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). We note the submitted information includes a DIC-24 statutory warning and a DIC-25 notice of suspension. Because the department provided copies of these forms to the arrestee, we find their release will not interfere with the detection, investigation, or prosecution of crime. Therefore, the department may not withhold the submitted DIC-24 statutory warning and DIC-25 notice of suspension under section 552.108(a)(1). The department states the remaining information relates to a pending criminal investigation. Based on this representation, we conclude the release of the remaining information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the submitted DIC-24 statutory warning, the submitted DIC-25 notice of suspension, and basic information, the department may generally withhold the submitted information under section 552.108(a)(1) of the Government Code, to the extent the department did not previously release it.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>1</sup> 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 department must withhold the arrestee’s date of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

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<sup>1</sup> The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (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. *See* Gov't Code § 552.130. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

We note the requestor is a representative of the Office of the Staff Judge Advocate of the United States Army. Section 411.089(a) of the Government Code provides “[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety (“DPS”)] any criminal history record information [“CHRI”] maintained by [DPS] about a person.” *See* Gov't Code § 411.089(a). In addition, section 411.087(a)(2) of the Government Code provides the following:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from [DPS CHRI] maintained by [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.

*Id.* § 411.087(a)(2). 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). However, a criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. *See id.* §§ 411.083(c), .087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information). Thus, to the extent the requestor represents a “criminal justice agency,” the requestor is authorized to obtain CHRI concerning the named individual from the department pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. *See* Gov't Code §§ 411.083(c), .087(a)(2).

We understand the requestor represents a criminal justice agency as defined by section 411.082. However, we are unable to determine whether he intends to use the CHRI at issue for a criminal justice purpose. A statutory right of access prevails over the Act's general exceptions to public disclosure, including section 552.108 of the Government Code. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Thus, if the department determines the requestor intends to use the CHRI for a law enforcement purpose, then the department must release the CHRI. If the department determines the requestor does not

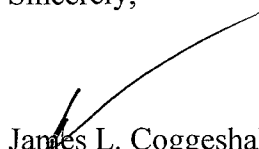
intend to use the CHRI for a law enforcement purpose, then the department is not required to the release the CHRI on that ground.

In summary, to the extent the department previously released any of the submitted information, the department must provide that information to the requestor in accordance with section 552.007 of the Government Code. To the extent the department did not previously release the information at issue, then, with the exception of the submitted DIC-24 statutory warning, the submitted DIC-25 notice of suspension, and basic information, the department may generally withhold the submitted information under section 552.108(a)(1) of the Government Code; however, in releasing the DIC-24 statutory warning, DIC-25 notice of suspension, and basic information, it must withhold the arrestee's date of birth under section 552.101 of the Government Code in conjunction with common-law privacy and the information we have marked under section 552.130 of the Government Code. Nevertheless, if the department determines the requestor intends to use the submitted CHRI for a law enforcement purpose, then the department must release the CHRI at issue.

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/be

Ref: ID# 803388

Enc. Submitted documents

c: Requestor  
(w/o enclosures)