



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 15, 2020

Ms. Whitney Redd  
Data Management Manager  
Texarkana Police Department  
100 North State Line Avenue, Box 15  
Texarkana, Texas 75501-5666

OR2020-01433

Dear Ms. Redd:

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# 807837.

The Texarkana Police Department (the "department") received a request for all information pertaining to a named individual, including specified incidents. You state the department will release some information. You also state the department does not maintain information responsive to a portion of the request.<sup>1</sup> You indicate the department will redact social security numbers pursuant to section 552.147 of the Government Code.<sup>2</sup> You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although you seek to withhold this information under section 552.108 of the Government Code, this section is

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<sup>1</sup> The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

<sup>2</sup> 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).

a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 does not make information confidential for the purposes of section 552.022. Accordingly, the department may not withhold the court-filed documents, which we marked, under section 552.108. Additionally, we note common-law privacy is not applicable to information contained in public court records. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, no portion of the court-filed documents may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Accordingly, the department must release the information we marked pursuant to section 552.022(a)(17) of the Government Code.

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). Generally, 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 report numbers T13-08684, B15-01440, and T19-04599 relate to open criminal investigations or prosecutions. Generally, the release of information pertaining to an open case is presumed to interfere with the criminal investigation. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). We note, however, report number T19-04599 includes a DIC-24 Statutory Warning and a DIC-25 Notice of Suspension. The Statutory Warning and Notice of Suspension have previously been provided to the arrestee. Because copies of these documents have previously been released to the arrestee, we find the department has not shown release of the documents will interfere with the detection, investigation, or prosecution of crime, and these documents may not be withheld under section 552.108(a)(1). *See* Gov't Code § 552.108(a)(1). Because the remaining information at issue in report number T19-04599 has not been previously released, we conclude release of this information would interfere with the detection, investigation, or prosecution of crime. Thus, we find section 552.108(a)(1) is applicable to report number B15-01440 and the remaining information at issue in report number T19-04599.

However, we note report number T13-08684 pertains to an investigation of misdemeanor assault. The statute of limitations for misdemeanor assault is two years from the date of the offense. *See* Code Crim. Proc. art. 12.02. More than two years have elapsed since the underlying incident for the alleged assault occurred. You do not inform us any criminal charges were filed within the applicable limitations periods. Accordingly, we find you have failed to demonstrate the release of report number T13-08684 would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the department may not withhold report number T13-08684 under section 552.108(a)(1) of the Government Code.

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 177 at 186-88; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include dates of birth or motor vehicle record information encompassed by section 552.130 of the Government Code. See ORD 127 at 3-4. Accordingly, with the exception of the information subject to section 552.022(a)(17) of the Government Code, the Statutory Warning, the Notice of Suspension, and basic information, the department may withhold report numbers B15-01440 and T19-04599 under section 552.108(a)(1) of the Government Code.<sup>3</sup>

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.). We note the requestor has a right of access to his own date of birth. See Gov't Code § 552.023(a) (“person or 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). Thus, with the exception of the requestor's date of birth and the information subject to section 552.022(a)(17) 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.

You indicate the department will redact information pursuant to section 552.130(c) of the Government Code.<sup>4</sup> Section 552.130 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. We note, because section 552.130 protects privacy interests, the requestor has a right of access to his own motor vehicle record information pursuant to section 552.023 of the Government Code. See *id.* § 552.023; ORD 481 at 4. Accordingly, with the exception of the motor vehicle record information pertaining to the requestor, the department must withhold the motor vehicle record information you marked under section 552.130 of the Government Code.

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<sup>3</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

<sup>4</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).

In summary, the department must release the information we marked pursuant to section 552.022(a)(17) of the Government Code. With the exception of the information subject to section 552.022(a)(17) of the Government Code, the Statutory Warning, the Notice of Suspension, and basic information, which must be released, the department may withhold report numbers B15-01440 and T19-04599 under section 552.108(a)(1) of the Government Code. With the exception of the requestor's date of birth and the information subject to section 552.022(a)(17) 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. With the exception of the motor vehicle record information pertaining to the requestor, the department must withhold the motor vehicle record information you marked under section 552.130 of the Government Code. The department must release the remaining information.<sup>5</sup>

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,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/jxd

Ref: ID# 807837

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>5</sup> We note the requestor has a right of access to some of the information being released in this instance. *See* Fam. Code § 261.201(k) (parent of child victim of abuse or neglect has right of access to information otherwise confidential under section 261.201(a) of the Family Code), (l)(2) (providing any information excepted from required disclosure under the Act or other law must be withheld from disclosure); Gov't Code § 552.023; ORD 481 at 4. If the department receives another request for this information from a different requestor, the department must again seek a ruling from this office. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).