



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 24, 2020

Ms. Kristen Mills
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2020-05817

Dear Ms. Mills:

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# 820304 (ORR# 16723).

The Baytown Police Department (the "department") received a request for information pertaining to a specified motor vehicle accident. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

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). The department states the information you marked pertains to an active criminal investigation or prosecution. Based on this representation, we conclude the release of the information at issue would interfere

¹ Although you have not raised 552.130 in your brief, we understand the department to assert this exception based upon your markings.

with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code.

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. You have marked the information subject to section 552.130. We note, however, the requestor represents the insurance provider for one of the individuals listed in the information at issue. As such, the requestor, if acting as the individual's authorized representative, has a right of access to the insured's motor vehicle record information. *See id.* § 552.023(a) (“[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the 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 an individual or authorized representative asks governmental body to provide information concerning that individual). Therefore, to the extent the requestor is acting as the insured's authorized representative, the department must release to the requestor the information you have marked pertaining to the insured, but withhold the remaining information marked under section 552.130 of the Government Code. To the extent the requestor is not acting as the insured's authorized representative, the department must withhold all of the motor vehicle record information you have marked under section 552.130 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.” *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.). As previously noted, the requestor represents the insurance provider for one of the individuals listed in the submitted information. As such, the requestor, if acting as the individual's authorized representative, has a right of access to the insured's date of birth. *See id.* § 552.023(a). Therefore, to the extent the requestor is acting as the insured's authorized representative, the department must release to the requestor the date of birth pertaining to the insured, but withhold the remaining public citizens' dates of birth under section 552.101 of the Government Code. To the extent the requestor is not acting as the insured's authorized representative, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code.

In summary, the department may withhold the information it marked under section 552.108(a)(1) of the Government Code. To the extent the requestor is acting as the insured's authorized representative, the department must release to the requestor the information pertaining to the insured, but withhold the remaining public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common law privacy and the remaining motor vehicle information you marked under section 552.130 of the Government Code. To the extent the requestor is not acting as the insured's authorized representative, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common law privacy and all of the motor vehicle record information you marked under section 552.130 of the Government Code. In either instance, 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,



Jesse Harvey
Assistant Attorney General
Open Records Division

JHI/mo

Ref: ID# 820304

Enc. Submitted documents

c: Requestor
(w/o enclosures)