



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 9, 2020

Ms. Julie P. Doshier
Counsel for the City of Allen
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 North Akard Street, Suite 1800
Dallas, Texas 75201

OR2020-07355

Dear Ms. Doshier:

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# 823679 (File Reference #113758).

The City of Allen (the "city"), which you represent, received a request for information pertaining to a specified incident involving the requestor's client.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim 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." 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 the information at issue relates to a pending criminal investigation, and release of the information would interfere with the investigation and prosecution of the case. Based upon this representation, we conclude the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle*

¹ You state the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

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, section 552.108(a)(1) is applicable to the submitted information. Accordingly, the city may withhold the information you marked under section 552.108(a)(1) 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.). You state the city will withhold dates of birth pursuant to the previous determination issued in Open Records Letter No. 2018-11817 (2018).³ However, we note the requestor has a right of access to her client’s 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, the city must withhold all public citizens’ dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

You state the city will redact information pursuant to section 552.130(c) of the Government Code.⁴ 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. We note, however, because section 552.130 protects privacy interests, the requestor has a right of access to her client’s motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Thus, with the exception of the information pertaining

² As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

³ Open Records Letter No. 2018-11817 authorizes the city to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general’s decision.

⁴ 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).

to the requestor's client, the city must withhold the motor vehicle record information you marked under section 552.130 of the Government Code.

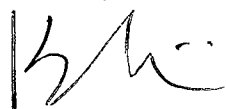
You state the city will redact information pursuant to section 552.147(b) of the Government Code.⁵ Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. Gov't Code § 552.147(a). As noted above, however, the requestor has a right of access to information pertaining to her client that would otherwise be private. *See id.* § 552.023; ORD 481 at 4. Therefore, the city may not withhold requestor's client's social security number you marked under section 552.147(a) of the Government Code.

In summary, the city may withhold the information you marked under section 552.108(a)(1) of the Government Code. With the exception of the requestor's client's date of birth, the city must withhold all public citizens' dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information pertaining to the requestor's client, the city must withhold the motor vehicle record information you marked under section 552.130 of the Government Code. The city must release the remaining information.⁶

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

⁵ 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).

⁶ We note the requestor has a right of access to some of the information being released under section 552.023 of the Government Code. *See* Gov't Code § 552.023; ORD 481 at 4. Accordingly, if the city receives another request for this same information from a different requestor, the city must again seek a ruling from this office.

Ms. Julie P. Doshier - Page 4

Ref: ID# 823679

Enc. Submitted documents

c: Requestor
(w/o enclosures)