



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 16, 2020

Ms. Captoria Brown
Senior Paralegal
City of Carrollton
1945 East Jackson Road
Carrollton, Texas 75006

OR2020-08136

Dear Ms. Brown and Ms. Hathaway:

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# 824771 (City ID Nos. 18863 & 18893).

The City of Carrollton (the "city") received two requests from different requestors for information pertaining to a specified incident. You claim 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.

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 release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain the submitted information relates to an active criminal investigation by the city's police department. Based upon your representation and our review, we conclude release of the information at issue 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 (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 remaining information you have marked and indicated, and the city may withhold it on that basis.¹

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). 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.).

Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must generally withhold the public citizens’ dates of birth you have marked under section 552.101 in conjunction with common-law privacy. However, we note the second requestor has a special right of access under section 552.023 of the Government Code to information pertaining to his client that would otherwise be withheld to protect his client’s privacy. *See* Gov’t Code § 552.023(b) (governmental body may not deny access to person or person’s representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, the city may not withhold from the second requestor the date of birth his client under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s or driver’s license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov’t Code § 552.130(a). Upon review, we find the city must withhold the information you have marked under section 552.130. We note, however, because section 552.130 is designed to protect the privacy of individuals, the second requestor has a right of access to his client’s motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from the second requestor under section 552.130. *See id.* § 552.023(a); ORD 481 at 4.

In summary, the city may withhold the information you have marked and indicated under section 552.108(a)(1) of the Government Code. The city must withhold the public citizens’ dates of birth you have marked under section 552.101 of the Government Code in conjunction with common-law privacy; however, the city may not withhold from the second requestor the date of birth pertaining to his client. The city must withhold the information you have marked under section 552.130 of the Government Code; however,

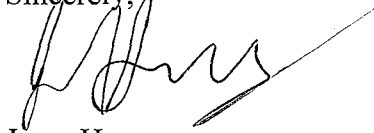
¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

the city may not withhold from the second requestor his client's motor vehicle record information. The city 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/jlbm

Ref: ID# 824771

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)