



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 2, 2020

Mr. Pete Thompson
Counsel for the Cedar Hill Independent School District
Clark Hill Strasburger
901 Main Street, Suite 6000
Dallas, Texas 75202-3794

OR2020-10169

Dear Mr. Thompson:

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# 819524 (ORR# CHISD0013).

The Cedar Hill Independent School District Police Department (the "department"), which you represent, received a request for a specified police report. The district claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the district has redacted the dates of birth and home telephone numbers of employees of the Cedar Hill Independent School District from the submitted report. We understand you to claim the home telephone numbers you have redacted are subject to section 552.117 of the Government Code and have been redacted as permitted by section 552.024(c) of the Government Code. *See* Gov't Code §§ 552.024(c), .117(a)(1). However, we note section 552.117 is applicable only to information that is held in an employment context. The department holds these records in a law enforcement context. Thus, section 552.117 is not applicable to the redacted home telephone numbers. The department does not assert, nor does our review of our records indicate, it has been authorized to withhold any of the redacted information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). Because we can discern the nature of the information that has been redacted, being deprived of it does not inhibit our ability to make a ruling in this instance. Nevertheless, be advised a failure to provide this office

with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering that the redacted information be released. *See* Gov't Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested"), .302.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See id.* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The department states the submitted information relates to a closed criminal investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is generally applicable to the information you marked.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, a detailed description of the offense. *See id.* at 3-4. In this instance, you seek to withhold the entire narrative portion of the submitted incident report under section 552.108. The remaining information does not contain information sufficient to satisfy the requirement that a "detailed description of the offense" be released as basic information. *See id.* Accordingly, we determine the department must release a sufficient portion of the narrative to encompass a detailed description of the offense. Thus, with the exception of the basic information, which must be released, the department may withhold the information you marked under section 552.108(a)(2) 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.). Thus, the department must withhold the dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of the basic information, which must be released, the department may withhold the information you marked under section 552.108(a)(2) of the

Government Code. The department must withhold dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.¹

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,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/gw

Ref: ID# 819524

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹ We note the requestor has a right of access to the information being released. See Fam. Code § 261.201(k); Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987). Thus, if the department receives another request for the same information from a different requestor, the department must again seek a decision from this office.