



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 1, 2020

Mr. Mark G. Mann
Senior Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2020-12411

Dear Ms. Garland:

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# 830832 (Reference No. GCA20-0275).

The City of Garland (the "city") received a request for a specified police report. 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 that claims an exception to disclosure under section 552.108(a)(1) must explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information at issue relates to pending criminal investigation. Based upon your representation and our review, we find 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). Accordingly, the city may withhold the information you marked under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code exempts 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, however, the requestor may be the authorized representative of one of the individuals whose information is at issue. *See* Gov’t Code § 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 individuals request information concerning themselves). Because we are unable to determine whether the requestor is acting as the authorized representative of one of the individuals whose privacy interests are at issue, we must rule conditionally. If the requestor is acting as the authorized representative of the individual at issue, then the city may not withhold the date of birth relating to this individual under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of the individual at issue, then the city must withhold the date of birth relating to this individual under section 552.101 in conjunction with common-law privacy. In either instance, the city must withhold the remaining date of birth 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 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. Gov’t Code § 552.130. Accordingly, the city must generally withhold the motor vehicle record information you marked, and the additional information we marked, under section 552.130 of the Government Code. We note section 552.130 protects privacy interests. As noted above, the requestor may be acting as the authorized representative of one of the individuals whose privacy interests are at issue; thus, the requestor may have a right of access to this individual’s private information pursuant to section 552.023 of the Government Code and it may not be withheld from the requestor under section 552.130. *See id.* § 552.023(b); ORD 481 at 4. Because we are unable to determine whether the requestor is acting as the authorized representative of one of the individuals whose privacy interests are at issue, we must rule conditionally. If the requestor is acting as the authorized representative of the individual at issue, then the city may not withhold the marked motor vehicle record information relating to this individual under section 552.130. If the requestor is not acting as the authorized representative of the individual at issue, then the city must withhold the marked motor vehicle record information relating to this individual under section 552.130. In either instance, the city must withhold the marked motor vehicle record information pertaining to the other individual under section 552.130.

In summary, the city may withhold the information you marked under section 552.108(a)(1) of the Government Code. If the requestor is not acting as the authorized representative of the individual at issue, then the city must withhold the date of birth relating to this individual under section 552.101 Government Code in conjunction with common-law privacy and the marked motor vehicle record information relating to this individual under section 552.130 of the Government Code. In either case, the city must (1) withhold the date of birth of the other individual under section 552.101 of the Government Code in conjunction with common-law privacy, (2) withhold the marked motor vehicle record information pertaining to the other individual under section 552.130 of the Government Code, and (3) 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,

Jahnna Ward
Assistant Attorney General
Open Records Division

JW/rm

Ref: ID# 830832

Enc. Submitted documents

c: Requestor
(w/o enclosures)