



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 20, 2020

Sergeant Guadalupe Garcia
Pharr Police Department
P.O. Box 1729
Pharr, Texas 78577

OR2020-18052

Dear Sgt. Garcia:

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# 836561 (Ref. No. P001211-051320).

The Pharr Police Department (the "department") received a request for information pertaining to two specified incidents. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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* Gov't Code § 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). You seek to withhold the information at issue under section 552.108(a)(2) "due to no conviction and/or deferred adjudication at this time." However, section 552.108(a)(2) is only applicable if the information at issue is related to a concluded criminal case that "did *not* result in conviction or deferred adjudication" (emphasis added). *See id.* § 552.108(a)(2). Thus, we find you have failed to demonstrate the applicability of section 552.108(a)(2) to the submitted information. Accordingly, the department may not withhold the submitted information 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.”¹ *Id.* § 552.101. Under the doctrine of common-law 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.). The submitted information contains the requestor’s date of birth. The requestor has a special right of access to her own information pursuant to section 552.023 of the Government Code. *See Gov’t Code* § 552.023 (person or person’s authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person’s privacy interests); ORD 481 at 4 (privacy theories not implicated when individual requests information concerning himself). Thus, the department may not withhold the requestor’s information from her under section 552.101 of the Government Code in conjunction with common-law privacy. Therefore, with the exception of the requestor’s date of birth, the department must withhold all public citizens’ dates of birth under section 552.101 of the Government Code 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. *See Gov’t Code* § 552.130(a). We note, because section 552.130 protects privacy interests, the requestor has a right of access to her motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023; ORD 481 at 4. Thus, with the exception of the requestor’s information, the department office must withhold the submitted driver’s license numbers and states under section 552.130 of the Government Code.

In summary, with the exception of the requestor’s date of birth, the department must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the requestor’s information, the department office must withhold the submitted driver’s license numbers and states under section 552.130 of the Government Code. The department must release the remaining information.²

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.

¹ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

² We note the remaining information contains a social security number. 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 under the Act. *Gov’t Code* § 552.147(b).

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,

Alexandra C. Burks
Attorney
Open Records Division

ACB/gw

Ref: ID# 836561

Enc. Submitted documents

c: Requestor
(w/o enclosures)