



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 24, 2020

Ms. Justine Tan
Assistant Criminal District Attorney
Galveston County Criminal District Attorney's Office
600 59th Street, Suite 101
Galveston, Texas 77551

OR2020-18546

Dear Ms. Tan:

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# 839201.

The Galveston County Criminal District Attorney's Office (the "district attorney's office") received a request for a specified incident report. You state the district attorney's office will release some of the requested information. You claim some 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)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The district attorney's office states the information at issue pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information. Accordingly, the district attorney's office 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 informer's privilege, which has long been recognized by Texas courts. *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. *See* Open Records Decision No. 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988). The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

You state the information you marked identifies a complainant who reported possible criminal activities to a law enforcement agency. Upon review, we conclude the district attorney's office demonstrated the applicability of the common-law informer's privilege to some of the information at issue. Accordingly, with the exception of the information we marked for release, the district attorney's office may withhold the information you marked under section 552.101 of the Government Code in conjunction with the informer's privilege. However, you have failed to demonstrate the remaining information at issue consists of the identifying information of an individual who reported a criminal violation to a law enforcement agency for purposes of the informer's privilege. Accordingly, the district attorney's office may not withhold any portion of the remaining information under section 552.101 on that basis.

Section 552.101 of the Government Code also 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 one of the individuals whose dates of birth the district attorney's office seeks to withhold has been deidentified pursuant to the informer's privilege. Therefore, this individual's privacy interest is sufficiently protected, and the district attorney's office may not withhold it under common-law privacy. Nevertheless, the district attorney's offices must withhold the remaining dates 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 withhold

the motor vehicle record information you marked under section 552.130 of the Government Code.

In summary, the district attorney's office may withhold the information you marked under section 552.108(a)(2) of the Government Code. With the exception of the information we marked for release, the district attorney's office may withhold the information you marked under section 552.101 of the Government Code in conjunction with the informer's privilege. With the exception of the dates of birth of individual who has been deidentified pursuant to the informer's privilege, the district attorney's office must withhold the remaining dates of birth under section 552.101 in conjunction with common-law privacy. The district attorney's office must withhold the information you marked under section 552.130 of the Government Code. The district attorney's office 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,

Jahna Ward
Assistant Attorney General
Open Records Division

JW/gw

Ref: ID# 839201

Enc. Submitted documents

c: Requestor
(w/o enclosures)