



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 5, 2020

Mr. Matthew Kendall  
Assistant County and District Attorney  
Cameron County  
964 East Harrison Street  
Brownsville, Texas 78502

OR2020-19488

Dear Mr. Kendall:

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# 841502 (Ref. No. W001391-052020).

Cameron County (the "county") received a request for a specified arrest report. The Cameron County District Attorney's Office (the "district attorney's office") has provided briefing on behalf of the county. You state some information has been released, but claim some of the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the procedural obligations of the county under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). In this instance, you state the county received the request for information on May 20, 2020. We note May 25, 2020 was a holiday. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the county's ten-business-day deadline was June 4, 2020. The envelope in which the county provided the information required by section 552.301(b) is postmarked June 10, 2020. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Because the county did not submit the information required by section 552.301(b) within the

required time period, we find the county failed to comply with the requirements of section 552.301 of the Government Code. *See id.* § 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.-Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.3d 379, 381 (Tex. App.-Austin 1990, no writ). The need of a governmental body, other than the governmental body that failed to timely seek an open records decision, to withhold information under section 552.108 of the Government Code can provide a compelling reason sufficient to overcome the presumption of openness. *See* Open Records Decision No. 586 (1991). Because you inform us the district attorney's office objects to the release of the information at issue, we will consider whether the county may withhold the information at issue under section 552.108 of the Government Code on behalf of the district attorney's office. Additionally, because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these sections to the information at issue.<sup>1</sup> However, we find you have failed to establish a compelling reason to address your remaining exception.

Section 552.108(a) 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: (1) 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); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

The district attorney's office states the information in Exhibit C relates to a pending criminal investigation or prosecution, and release of that information would interfere with the investigation or prosecution of the case. Based upon this representation, we conclude the 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 information in Exhibit C.

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the county may withhold the information in Exhibit C under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.

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

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 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.). Thus, the county must withhold the public citizen’s date of birth in the remaining information 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. Accordingly, the county must withhold the information we marked in the remaining records under section 552.130 of the Government Code.

In summary, with the exception of basic information, the county may withhold the information in Exhibit C under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office. The county must withhold the public citizen’s date of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The county must withhold the information we marked in the remaining records under section 552.130 of the Government Code. The county must release the remaining submitted 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,

Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/rm

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)