



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 28, 2020

Ms. Jessica Farrias
Open Records Coordinator
City of Carrollton
P.O. Box 110535
Carrollton, Texas 75011

OR2020-21609

Dear Ms. Farrias:

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# 844448 (City ID 20281).

The City of Carrollton (the "city") received a request for a specified incident report. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 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). Generally, a governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to an ongoing criminal investigation. Based upon your representation and our review, we conclude the release of the submitted information 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 at issue. 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 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 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.). Thus, the city must withhold the public citizens’ dates of birth you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, the requestor may be the authorized representative of one of the individual’s whose date of birth is at issue. *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); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). If the requestor is acting as the authorized representative of this individual, then the city may not withhold this individual’s date of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is not acting as the authorized representative of the individual at issue, then the city must withhold the date of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).¹ *See* Gov’t Code § 552.137(a)-(c). We note the requestor might be the authorized representative of the individual whose e-mail address is at issue. *See id.* § 552.137(b). Accordingly, if the requestor is the individual’s authorized representative, then he has a right of access to the marked e-mail address and it may not be withheld from him under section 552.137 of the Government Code. However, if the requestor is not acting as the authorized representative of the individual whose e-mail address is at issue, then the city must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, the city may withhold the marked information under section 552.108(a)(1) of the Government Code. The city must withhold the public citizens’ dates of birth you have marked under section 552.101 of the Government Code in conjunction with common-law

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

privacy. If the requestor is not acting as the authorized representative of the individual at issue, then the city must also withhold the date of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of the individual whose e-mail address is at issue, then the city must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The city 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,

Thana Hussaini
Assistant Attorney General
Open Records Division

TSH/jxd

Ref: ID# 844448
Enc. Submitted documents

c: Requestor
(w/o enclosures)