



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 5, 2020

Ms. Kimber Summers
Assistant General Counsel
Texas Woman's University
P.O. Box 425497
Denton, Texas 76204

OR2020-25011

Dear Ms. Summers:

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# 846420 (TPIA_2020_046).

The Texas Women's University (the "university") received a request for a specified report. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

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. You raise section 552.101 in conjunction with the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). 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."

¹ Although you also raise section 552.024 of the Government Code, we note this section is not an exception to disclosure. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. *See Gov't Code § 552.024.*

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). However, individuals who provide information in the course of an investigation but do not make a report of the violation are not informants for the purposes of claiming the informer's privilege. 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 portions of the submitted information identify a complainant who reported violations of law to the university's police department. There is no indication the subject of the complaint knows the identity of the complainant. Based upon your representations and our review, we conclude the city has demonstrated the applicability of the common-law informer's privilege to the information at issue, which we marked. Therefore, the city may withhold the information we marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.² The remaining information must be released.

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 remaining dates of birth pertains to an individual who will be de-identified under common-law informer's privilege and whose privacy interests will therefore be protected. Accordingly, the university must withhold the dates of birth of identified individuals under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147(a). Upon review, we agree the city may withhold the remaining social security number you marked under section 552.147(a) of the Government Code.

In summary, the city may withhold the information we marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The university must withhold the dates of birth of identified individuals under section 552.101 of the Government Code in conjunction with common-law privacy. The city may withhold the remaining social security number you marked under section 552.147(a) of the Government Code. The city must release the remaining information.

² As our ruling is dispositive, we need not address your remaining argument against disclosure of this 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,

Britni Ramirez
Assistant Attorney General
Open Records Division

BR/eb

Ref: ID# 846420

Enc. Submitted documents

c: Requestor
(w/o enclosures)