



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 30, 2020

Ms. Olivia Hathaway
Administrative Support Specialist
City of Carrollton
P.O. Box 110535
Carrollton, Texas 75011-0535

OR2020-27255

Dear Ms. Hathaway:

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# 851669 (City IDs 20701 and 20736).

The City of Carrollton (the "city") received two requests for information pertaining to a specified incident. You indicate the city has released some of the requested information to the requestors. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.137 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). 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information at issue relates to an active criminal investigation by the city's police department. Based upon your representation and our review, we conclude 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 at issue and the city may withhold the information you have marked on that basis.

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 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 citizen’s date of birth you marked from the first requestor 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 or driver’s license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov’t Code § 552.130(a). Upon review, we determine, with the exception of the information we have marked, the city must withhold the information you marked from the first requestor under section 552.130. The information we have marked is not information that is subject to section 552.130 and it may not be withheld on that basis.

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). *Id.* § 552.137(a)-(c). The e-mail address at issue is not one of the types specifically excluded by section 552.137(c). *See id.* § 552.137(c). Accordingly, the city must withhold the e-mail address you have marked from the first requestor under section 552.137 unless the owner of the address affirmatively consents to its release.

In summary the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The city must release the remaining information to the second requestor.¹ With respect to the first requestor, the city must (1) withhold the public citizen’s date of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the information you marked under section 552.130 of the Government Code, with the exception of the information we marked for release; (3) withhold the e-mail address you have marked under section 552.137 of the

¹ We note the second requestor has a right of access beyond that of the general public to portions of the information being released to her. *See* Gov’t Code §§ 552.023(a) (person or person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests), .137(b) (personal e-mail address of member of public may be disclosed if owner of address affirmatively consents to its disclosure); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself).

Government Code unless the owner of the address affirmatively consents to its release; and (4) 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,

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/jm

Ref: ID# 851669

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)