



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 10, 2020

Ms. Lisa Wilson
City Secretary
City of Copperas Cove
P.O. Drawer 1449
Copperas Cove, Texas 65422

OR2020-28255

Dear Ms. Wilson:

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# 855312 (ORR# W006443).

The City of Copperas Cove (the "city") received a request for information related to a specified incident involving a named individual. The city states it is releasing some of the requested information. The city claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the city claims and reviewed the submitted information.

The city asserts the submitted information is excepted under section 552.108 of the Government Code, which provides, in relevant part, the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution; [or]

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2), (b)(1)-(2). A governmental body raising section 552.108 must explain the applicability of section 552.108. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Thus, a governmental body claiming subsection 552.108(a)(1) or 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.108(a)(1), (b)(1); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The city states the submitted information was created by the city's Animal Control Department (the "department"). The city explains the department's primary functions are to enforce state laws and city ordinances pertaining to animals[.]” Thus, we understand the city argues the department is a law enforcement agency for purposes of section 552.108. However, the city does not inform us the information at issue pertains to a specific ongoing criminal investigation or prosecution, nor has the city explained release of the information would interfere in some way with the detection, investigation, or prosecution of crime. Thus, the city has failed to demonstrate the applicability of subsection 552.108(a)(1) or subsection 552.108(b)(1). A governmental body claiming subsection 552.108(a)(2) or subsection 552.108(b)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See Gov't Code* § 552.108(a)(2), (b)(2). The city has not explained the information at issue pertains to a closed investigation that concluded in a final result other than a conviction or deferred adjudication. Thus, the city has failed to demonstrate the applicability of either subsection 552.108(a)(2) or subsection 552.108(b)(2). Therefore, the city may not withhold any of the submitted information under section 552.108. However, we will consider the applicability of additional exceptions to disclosure of 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.”¹ 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

¹ 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).

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 all public citizens' dates of birth 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 city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, the city must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. 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,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/mo

Ref: ID# 855312

Enc. Submitted documents

c: Requestor
(w/o enclosures)