



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 12, 2020

Mr. Mark G. Mann
Senior Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2020-28442

Dear Mr. Mann:

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# 853904 (GCA20-0730).

The Garland Police Department (the "department") received a request for all information related to a specified incident. You state you have released some information to the requestor. You claim portions of the submitted information is excepted from disclosure under sections 552.108 and 552.130 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 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 information at issue relates to a pending criminal investigation and prosecution. Based on your representation and our review, we find 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, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code.

You state you will withhold dates of birth pursuant to a previous determination issued in Open Records Letter No. 2017-22182 (2017).¹ 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. This section 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.). However, we note the requestor may be acting as an authorized representative of one of the individuals at issue, in which case the requestor would have a special right of access to this individual’s otherwise private information pursuant to section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a) (governmental body may not deny access to person or person’s representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Therefore, we must rule conditionally. To the extent the requestor is not acting as the authorized representative of any of the individuals at issue, the department must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. Conversely, to the extent the requestor is acting as the authorized representative of an individual at issue, the department must release this individual’s date of birth, and withhold the remaining 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 a 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. We note section 552.130 protects personal privacy. Accordingly, to the extent the requestor is acting as the authorized representative of an individual at issue, she has a right of access to this individual’s motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from her under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. To the extent the requestor is not acting as the authorized representative of any individual at issue, the department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code. Conversely, to the extent the requestor is acting as the authorized representative of an involved individual, the department must release this individual’s motor vehicle record information and withhold the remaining motor vehicle record information you have marked under section 552.130 of the Government Code.

In summary, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code. If the requestor is not acting as the authorized

¹ Open Records Letter No. 2017-22182 is a previous determination issued to the department authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

representative of any individual at issue, then the department must: (1) withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the motor vehicle record information you have marked under section 552.130 of the Government Code; and (3) release the remaining information. To the extent the requestor is acting as the authorized representative of any individual at issue, the department must: (1) withhold the dates of birth not pertaining to the requestor's client under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the motor vehicle record information you have marked not belonging to the named individual under section 552.130 of the Government Code; and (3) release the remaining information to this requestor.²

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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/be

Ref: ID# 853904

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² As noted above, the requestor may have a right of access to some of the information being released. *See* Gov't Code § 552.023(a); ORD 481 at 4. To the extent the requestor has a right of access, if the department receives another request for this information from an individual without such a right of access, we note section 552.130(c) of the Government Code allows a governmental body to react the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 553.130(e). *See id.* § 552.130(d), (e). Additionally, as noted above, Open Records Letter No. 2017-22182 is a previous determination issued to the department authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.