



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 20, 2020

Mr. L. Brian Narvaez
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2020-29194

Dear Mr. Narvaez:

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# 855357 (ID Nos. P016100 and P016148).

The City of McKinney (the "city"), which you represent, received two requests from two requestors for information related to a specified incident. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the second requestor requested only the report from the incident at issue. Thus, the submitted video recordings are not responsive to the second requestor's request. The city need not release non-responsive information in response to the second request, and this ruling will not address that information with respect to the second request.

Next, we must address the applicability of section 552.007 of the Government Code to the submitted information. Section 552.007 of the Government Code provides information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See Gov't Code § 552.007; Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988).* You state the city previously released some of the submitted information in response to a previous request for information. Accordingly, the city may not withhold previously released information unless its release is expressly prohibited by law or the information is confidential under law. You state, and provide documentation showing, the city and the Collin County District Attorney's Office (the "district attorney's office") raise section 552.108 of the Government Code. Section 552.108 is a discretionary exception to disclosure that protects a

governmental body's interests and does not make information confidential under the Act. *See* Gov't Code § 552.007; Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, to the extent the information at issue was previously released, the city may not now withhold that information under section 552.108 of the Government Code. However, because sections 552.101 and 552.130 of the Government Code protect information made confidential by law, we will address these exceptions for the information that was previously released.¹ Furthermore, to the extent the city did not previously release the information at issue, we will address the submitted argument against its disclosure.

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 submitted information is related to a pending investigation or prosecution. You further state, and provide documentation demonstrating, the district attorney's office objects to disclosure of the information at issue because such release will interfere with a pending criminal prosecution. Generally, the release of information pertaining to an open case is presumed to interfere with the criminal investigation. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). We note, however, the information at issue includes a DIC-24 Statutory Warning. The Statutory Warning has previously been provided to the arrestee. Because a copy of this document has previously been released to the arrestee, we find you have not shown release of this document will interfere with the detection, investigation, or prosecution of crime, and this document may not be withheld under section 552.108(a)(1). *See* Gov't Code § 552.108(a)(1). To the extent the remaining information has not been previously released, we conclude release of this information would interfere with the detection, investigation, or prosecution of crime. Thus, we find section 552.108(a)(1) is applicable to the remaining information.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, to the extent the submitted information was not previously released, with the exception of the Statutory Warning and basic information, the city may withhold the submitted information 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

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).

Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). 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.).

Upon review, we find, to the extent the submitted information was previously released, some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note, however, the requestors represent the insurance providers for some of the individuals listed in the information at issue. As such, the requestors, if acting as the individuals' authorized representatives, have a right of access to their insureds' private information. *See* Gov't Code § 552.023(a) (“[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests”); ORD 481 at 4 (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). Therefore, to the extent the requestors are acting as their insureds' authorized representatives, the city must release to the requestors the dates of birth and other private information pertaining to the insureds, but withhold the remaining public citizens' dates of birth within the information at issue and the information we marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the requestors are not acting as their insureds' authorized representatives, the city must withhold the information we marked and indicated and the public citizens' dates of birth within the information at issue 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. As noted previously, the requestors represent the insurance providers for some of the individuals listed in the information at issue. As such, the requestors, if acting as the individuals' authorized representatives, have a right of access to their insureds' motor vehicle record information.

See id. § 552.023(a); ORD 481 at 4. Therefore, to the extent the requestors are acting as their insureds' authorized representatives, the city must release to the requestors the information at issue pertaining to their insureds, but must withhold the remaining information we marked and indicated under section 552.130 of the Government Code. To the extent the requestors are not acting as their insureds' authorized representatives, the city must withhold the motor vehicle record information we marked and indicated under section 552.130 of the Government Code.

In summary, to the extent the submitted information was not previously released, with the exception of the Statutory Warning and basic information, which must be released, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. To the extent the submitted information was previously released: (1) to the extent the requestors are acting as their insureds' authorized representatives, the city must release to the requestors the dates of birth and other private information pertaining to their insureds, but withhold the remaining public citizens' dates of birth in the information at issue and the information we marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy; (2) to the extent the requestors are acting as their insureds' authorized representatives, the city must release to the requestors the information at issue pertaining to their insureds, but must withhold the remaining information we marked and indicated under section 552.130 of the Government Code; (3) the city must release the remaining information.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,

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/be

² We note the information being released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b). However, to the extent the requestors are acting as their insureds' authorized representatives, the requestors have a right of access to their insureds' social security numbers and they must be released to them. *See generally id.* § 552.023(a); ORD 481 at 4.

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Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)