



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 21, 2022

Mr. James Kopp
Assistant City Attorney
City of San Antonio
315 South Santa Rosa, 6th Floor
San Antonio, Texas 78207

OR2022-01700

Dear Mr. Kopp:

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# 926408 (COSA File No. W410590).

The City of San Antonio (the "city") received a request for information pertaining to a specified incident. You claim some of the submitted information is excepted from disclosure under sections 552.108 and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. You inform us some of the submitted information relates to undercover peace officers. You assert release of this information would subject the officers to a substantial threat of physical harm. Based upon these representations and our review, we conclude you have demonstrated release of the information at issue would subject the officers to a substantial threat of physical harm. Therefore, the city must withhold the undercover officers' identities, which you marked, under section 552.152 of the Government Code.¹

¹ As our ruling is dispositive, we need not address the remaining argument against disclosure of this 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.”² 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 doctrine of the common-law 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 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 excepts from public disclosure 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. *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.

Section 552.137 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). *See id.* § 552.137(a)-(c). The e-mail address at issue is not a type specifically excluded by section 552.137(c). Accordingly, the city must withhold the e-mail address we marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure.

In summary, the city must withhold the undercover officers’ identities, which you marked, under section 552.152 of the Government Code. 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 withhold the e-mail address we marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure. The city must release the remaining information.³

² 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).

³ We note the information being released contains a social security number. 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).

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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/jxd

Ref: ID# 926408

Enc. Submitted documents

c: Requestor
(w/o enclosures)