



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 16, 2022

Mr. Jacob Woolston
Staff Attorney
Round Rock Independent School District
1311 Round Rock Avenue
Round Rock, Texas 78681

OR2022-07758

Dear Mr. Woolston:

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# 936158 (TPIA# 2022-244).

The Round Rock Independent School District (the "district") received a request for information pertaining to specified arrests. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note the arrest warrants and probable cause affidavits at issue were the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2021-35568 (2021). In that ruling, we determined the district must release the requested information. We note the Act does not permit the selective disclosure of information. Section 552.007 provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the district may not now withhold the information that was previously ordered released unless its release is expressly prohibited by law or the information is confidential by law. Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver).

Therefore, section 552.108 neither prohibits public disclosure of information nor makes information confidential under law. Accordingly, pursuant to section 552.007, the district may not now withhold under section 552.108 the arrest warrants and probable cause affidavits that were previously ordered released pursuant to Open Records Letter No. 2021-35568. However, as sections 552.101 and 552.130 of the Government Code can make information confidential, we will address the applicability of these exceptions to the information previously ordered released in Open Records Letter No. 2021-35568.¹ Further, we will consider your arguments under sections 552.101 and 552.108 for the remaining 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). The district states the remaining information relates to an active investigation and prosecution. Based on this representation, we conclude the 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 remaining information.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 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, with the exception of basic information, the district may withhold the remaining 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 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. *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 district must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or 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. Gov't Code § 552.130(a). Upon review, we find the district must withhold the driver's license numbers and states of issuance under section 552.130 of the Government Code.

In summary, with the exception of the arrest warrants, probable cause affidavits, and basic information, the district may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing the arrest warrants and probable cause affidavits, the district must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy and the driver's license numbers and states of issuance under section 552.130 of the Government Code.

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,

Kelly McWethy
Assistant Attorney General
Open Records Division

KM/jxd

Ref: ID# 936158

Enc. Submitted documents

c: Requestor
(w/o enclosures)