



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 23, 2022

Ms. Briana D. August  
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P.O. Box 750132  
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OR2022-14673

Dear Ms. August:

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# 949420.

The Southern Methodist University Police Department (the "department") received a request for a specified offense report. The department claims the submitted information is either not subject to the Act is exception from disclosure under sections 552.101 and 552.130 of the Government Code.<sup>1</sup> We have considered the submitted arguments and reviewed the submitted information.

Section 51.212(f) of the Education Code provides, "[a] campus police department of a private institution of higher education is a law enforcement agency and a governmental body for purposes of [the Act], only with respect to information relating solely to law enforcement activities." Educ. Code § 51.212(f). We understand the department is a campus police department of a private institution of higher education. *See id.* §§ 51.212(e), 61.003. Thus, the department is a governmental body for purposes of the Act, and information maintained by the department is subject to disclosure under the Act, to the extent such information relates solely to law enforcement activities. The department asserts the submitted information does not relate solely to law enforcement activities. Rather, the department claims this information is administrative in nature, and thus, is not subject to

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<sup>1</sup> We understand the department to raise section 552.130 based on its markings.

release under the Act pursuant to section 51.212(f). However, we find this information was created by the department for the purpose of law enforcement and the department has not demonstrated it is related to any other non-law enforcement activity. Therefore, we find the submitted information relates solely to law enforcement activities for purposes of section 51.212(f) of the Education Code, and thus, is subject to the Act. Accordingly, this information must be released, unless it falls within an exception to public disclosure under the Act. *See* Gov't Code §§ 552.006, .021, .301, .302.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This exception encompasses the informer's privilege, which has long been recognized by Texas courts. *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. *See* Open Records Decision No. 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to “administrative officials having a duty of inspection or of law enforcement within their particular spheres.” Open Records Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988). The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990). The department states the submitted information contains the identifying information of a complainant who reported possible criminal activities to a law enforcement agency. Upon review, we conclude the department may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the informer's privilege. However, we find the department has failed to demonstrate the remaining information at issue identifies a complainant for purposes of the informer's privilege. Thus, the department may not withhold any of the remaining information under section 552.101 on that basis.

Section 552.101 of the Government Code also 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.). The requestor has a right of access to his own date of birth pursuant to section 552.023 of the Government Code. *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"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). In addition, the remaining submitted date of birth pertains to an individual who has been de-identified pursuant to the informer's privilege. Therefore, the privacy interest in that date of birth is sufficiently protected, and the department may not withhold it under section 552.101 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. Because section 552.130 protects personal privacy, the requestor has a right of access to his own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. However, the department must withhold the information it has marked under section 552.130 of the Government Code that does not pertain to the requestor.

In summary, the department may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the informer's privilege. The department must withhold the information it has marked under section 552.130 of the Government Code that does not pertain to the requestor. The department 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,

James L. Coggeshall  
Assistant Attorney General  
Open Records Division

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)