



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 24, 2022

Ms. Lauren Downey
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2022-14957

Dear Ms. Downey:

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# 950111 (OAG PIR No. R011861).

The Office of the Attorney General (the "OAG") received a request for subpoenas served by the Federal Bureau of Investigation or the United States Attorney on the OAG, the attorney general, or OAG staff during a specified time period. You claim some of the requested information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. Additionally, although you take no position with respect to whether the remaining information is excepted from disclosure, you state you have notified four United States Attorneys' Offices ("USAO") of the request. *See* Gov't Code § 552.304 (interested third party may submit comments stating why information should or should not be released). We have received comments from the USAO for the Central District of Illinois ("USAO CD Illinois") and the USAO for the Northern District of Texas ("USAO ND Texas").¹ We have considered the submitted arguments and reviewed the submitted 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." *Id.* § 552.101. This office has repeatedly held that the transfer of confidential information

¹ As of the date of this letter, we have not received comments from the two notified USAOs for the Western District of Texas.

between governmental agencies does not destroy the confidentiality of that information. *See* Attorney General Opinions H-917 (1976), H-836 (1974); Open Records Decision Nos. 561 (1990), 414 (1984), 388 (1983), 272 (1981), 183 (1978). These opinions recognize the need to maintain an unrestricted flow of information between state agencies. In Open Records Decision No. 561, we considered whether the same rule applied regarding information deemed confidential by a federal agency. In that decision, we noted the general rule that section 552 of title 5 of the United States Code, the federal Freedom of Information Act (“FOIA”), applies only to federal agencies and does not apply to records held by state agencies. ORD 561 at 6. Further, we stated information is not confidential when in the hands of a Texas agency simply because the same information is confidential in the hands of a federal agency. *Id.* However, in the interests of comity between state and federal authorities and to ensure the flow of information from federal agencies to Texas governmental bodies, we concluded, “when information in the possession of a federal agency is ‘deemed confidential’ by federal law, such confidentiality is not destroyed by the sharing of the information with a governmental body in Texas. In such an instance, [section 552.101] requires a local government to respect the confidentiality imposed on the information by federal law.” *Id.* at 7.

The USAO CD Illinois informs this office a portion of Exhibit C was provided to the OAG by the USAO CD Illinois. The USAO CD Illinois also explains it considers the information at issue confidential under the provisions found in section 552(b)(7) of title 5 of the United States Code. *See* 5 U.S.C. § 552(b)(7)(A) (agency may withhold information compiled for law enforcement purposes, but only to extent production of such law enforcement information could reasonably be expected to interfere with enforcement proceedings). Therefore, we conclude the OAG must withhold the information at issue, which we marked, under section 552.101 of the Government Code in conjunction with federal law.²

Section 552.107(2) of the Government Code provides information is excepted from disclosure if “a court by order has prohibited disclosure of the information.” *Id.* § 552.107(2). You state the information in Exhibit B has been placed under seal by United States District Court for the Western District of Texas. Based upon this representation and our review, we find a court has prohibited disclosure of the information at issue. Accordingly, the OAG must withhold Exhibit B under section 552.107(2).³

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[.]” *Id.* § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See*

²As our ruling is dispositive, we need not address the remaining arguments of USAO CD Illinois against disclosure of this information.

³ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

id. §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by any proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987) (section 552.108 may be invoked by any proper custodian of information relating to pending investigation or prosecution of criminal conduct). Where a governmental body has custody of information relating to a pending case of a law enforcement agency, the custodian of records may withhold the information if it provides this office with a demonstration the information relates to a pending criminal case and a representation from the law enforcement agency that it wishes to have the information withheld. The USAO ND Texas states the release of a portion of the information in Exhibit C would interfere with the detection, investigation, or prosecution of crime. Based upon this representation and our review, we conclude section 552.108(a)(1) is applicable to the information at issue and the OAG may withhold this information, which we marked on that basis on behalf of the USAO ND Texas. *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).

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy.⁴ *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.). Thus, the OAG must withhold the public citizen's date of birth in the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, the OAG must withhold the information we marked in Exhibit C under section 552.101 of the Government Code in conjunction with federal law. The OAG must withhold Exhibit B under section 552.107(2) of the Government Code. The OAG may withhold the information we marked in Exhibit C under section 552.108(a)(1) of the Government Code on behalf of the USAO ND Texas. The OAG must withhold the public citizen's date of birth in the remaining information in Exhibit C under section 552.101 of the Government Code in conjunction with common-law privacy. The OAG must release the remaining information in Exhibit C.

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.

⁴ 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).

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,

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/

Ref: ID# 950111

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third Parties
(w/o enclosures)