



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 3, 2022

Ms. Dayana Chavez
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2022-15926

Dear Mr. Chavez:

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# 951815 (ORR# 23798).

The Baytown Police Department (the "department") received a request for information pertaining to a specified incident. The department indicates it will withhold information pursuant to section 552.130(c) of the Government Code.¹ The department claims some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.152 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Section 552.108(a) 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: (1) 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 information at issue 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, 710 (Tex. 1977). The department states the information it has marked under section 552.108(a)(1) relates to a pending criminal investigation or prosecution. Based on this representation, we conclude the release

¹ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

of this information 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the department may withhold the information it has marked under section 552.108(a)(1) of the Government Code.²

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. *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 department must withhold the submitted dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.152 of the Government Code provides the following:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 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. Upon review, we find the department has failed to demonstrate release of any of the information at issue would subject an employee or officer of the department to a substantial threat of physical harm. Therefore, the department may not withhold the information it has marked under section 552.152 of the Government Code.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.³ *Id.* § 552.1175. Section 552.1175, applies, in part, to “current or honorably retired peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” Gov’t Code § 552.1175(a)(1)); *see id.* § 552.003(1-b) (defining “honorably retired” for purposes of the Act). Accordingly, the department must withhold the information we have marked under section 552.1175 of the Government Code if the officer

² As our ruling is dispositive, we do not address the other arguments of the department to withhold this information.

³ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

at issue elects to restrict access to the marked information at issue in accordance with section 552.1175(b) of the Government Code. Conversely, if the officer does not elect to restrict access to the information at issue in accordance with section 552.1175(b), then the department may not withhold this information under section 552.1175 of the Government Code.

In summary, the department may withhold the information it has marked under section 552.108(a)(1) of the Government Code. The department must withhold the submitted dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the information we have marked under section 552.1175 of the Government Code if the officer at issue elects to restrict access to the marked information at issue in accordance with section 552.1175(b) of the Government Code. 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

JLC/jxd

Ref: ID# 951815

Enc. Submitted documents

c: Requestor
(w/o enclosures)