



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 13, 2022

Ms. Josi Diaz
Assistant City Attorney
City of Dallas
1400 Botham Jean Boulevard
Dallas, Texas 75215

OR2022-20157

Dear Ms. Diaz:

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# 958449 (ORR# D0031757).

The Dallas Police Department (the “department”) received a request for a specified police report.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.108 of the Government Code.² We have considered the exception you claim and reviewed the submitted representative sample of information.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

¹ As the department has failed to submit a copy of the written request for information, we take our description of the request from your brief.

² We note, and you acknowledge, the department failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov’t Code § 552.301(b), (e). Nonetheless, third party interests can provide a compelling reason to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* §§ 552.007, .302; Open Records Decision No. 150 at 2 (1977). Although you do not cite to sections 552.101 and 552.130 of the Government Code in your brief to this office, we understand you to raise these sections based on your markings. Sections 552.101 and 552.130 can also provide compelling reasons to overcome the presumption of openness. Thus, we will consider whether the submitted information is excepted from disclosure under the Act, notwithstanding the department’s violation of section 552.301 in requesting this decision.

³ We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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). You state, and provide documentation demonstrating, the Dallas County District Attorney’s Office (the “district attorney’s office”) objects to release of the information at issue because it relates to its ongoing criminal investigation. 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). Accordingly, the department may withhold the information it marked under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office.

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 department 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 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 department must withhold the motor vehicle record information it marked and the additional information we have marked under section 552.130 of the Government Code.

In summary, the department may withhold the information it marked under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office. The department must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information it marked and the additional information we have marked under section 552.130 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,

Kelly McWethy
Assistant Attorney General
Open Records Division

KM/be

Ref: ID# 958449

Enc. Submitted documents

c: Requestor
(w/o enclosures)