



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 15, 2022

Mr. James W. Wright  
City Attorney  
Livingston Police Department  
208 West Church Street  
Livingston, Texas 77351-3281

OR2022-20577

Dear Mr. Wright:

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# 959743.

The Livingston Police Department (the "department") received a request for several categories of information and communications pertaining to named individuals and specified topics.<sup>1</sup> You state some information will be released. We understand the department is withholding social security numbers pursuant to section 552.147(b) of the Government Code.<sup>2</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information may have been subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2022-16952 (2022). In that ruling, we determined the department must release the

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<sup>1</sup> You inform us the requestor modified his request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request). *See also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

<sup>2</sup> Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

submitted information. Section 552.007 of the Government Code provides information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Accordingly, the department may not withhold previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although you raise section 552.108 of the Government Code for some of the previously released information, section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See* Gov't Code § 552.007; Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, to the extent the information at issue was previously released, the department may not now withhold that information under section 552.108 of the Government Code. Because sections 552.101 and 552.130 of the Government Code protect information made confidential by law, we will address these exceptions for the information that was previously released.<sup>3</sup> Furthermore, to the extent the department did not previously release the information at issue, we will address your claimed exception under section 552.108.

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). You state the submitted information relates to a pending investigation or prosecution. Based on your representation and our review, we find release of the submitted 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 (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 submitted information.

However, 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). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, to the extent the information at issue was not previously released, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

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<sup>3</sup> The Office of the Attorney General will raise mandatory exceptions 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 552.101 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, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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.). We note the names, home addresses, and telephone numbers of living members of the public are generally not highly intimate or embarrassing. *See* Open Records Decision Nos. 551 at 3 (disclosure of a person’s name, address, or telephone number not invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers not protected under privacy). Upon review, we find the department must withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate any portion of the information at issue is highly intimate or embarrassing and not of legitimate public interest. Thus, the authority may not withhold any of the basic information 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 information you marked under section 552.130 of the Government Code.

In summary, to the extent the submitted information at issue was not previously released, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. To the extent the information at issue was previously released, the department 1) must withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy; 2) must withhold the information you marked under section 552.130 of the Government Code; and 3) 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,

Paige Lay  
Assistant Attorney General  
Open Records Division

PL/be

Ref: ID# 959743

Enc. Submitted documents

c: Requestor  
(w/o enclosures)