



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 21, 2022

Mr. Mark G. Mann  
Senior Assistant City Attorney  
City of Garland  
P.O. Box 469002  
Garland, Texas 75046-9002

OR2022-21326

Dear Mr. Mann:

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# 961372 (GCA22-0583).

The Garland Police Department (the "department") received a request for information pertaining to a specified motor vehicle accident involving the requestor's client. The department states it released some of the requested information. The department claims the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the submitted information includes a search warrant. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record[,]" unless the information is expressly made confidential under the Act or other law. Gov't Code § 552.022(a)(17). The department seeks to withhold the information at issue under section 552.108 of the Government Code. However, section 552.108 is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the department may not withhold any portion of the submitted search warrant under section 552.108. Further, although the department raises section 552.101 of the Government Code in conjunction with common-law privacy for some of the information subject to section 552.022(a)(17), we note common-law privacy is not applicable to information contained in public records. *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 496 (1975) (action for invasion of privacy cannot be maintained where

information is in public domain); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (law cannot recall information once in public domain). Thus, no portion of the information subject to section 552.022(a)(17) may be withheld under section 552.101 in conjunction with common-law privacy. However, we will address the department's arguments against disclosure of the remaining information.

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 this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The department states the remaining information relates to a pending criminal investigation. Based on this representation, we conclude release of the information the department marked and indicated will 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, we find the department may withhold the remaining information it marked and indicated under section 552.108(a)(1) of the Government Code.<sup>1</sup>

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 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 the public citizen’s date of birth it marked within the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, except for the search warrant subject to section 552.022(a)(17) of the Government Code, the department may withhold the information it marked and indicated under section 552.108(a)(1) of the Government Code. The department must withhold the public citizen’s date of birth it marked within the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. 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.

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<sup>1</sup> As our ruling is dispositive, we need not address the department’s remaining argument against disclosure of this information.

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,

Katie Stallcup  
Assistant Attorney General  
Open Records Division

AKS/be

Ref: ID# 961372

Enc. Submitted documents

c: Requestor  
(w/o enclosures)