



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 2, 2022

Ms. P. Armstrong  
Assistant City Attorney  
City of Dallas  
1400 Botham Jean Boulevard  
Dallas, Texas 75215

OR2022-22667

Dear Ms. Armstrong:

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# 963365 (ORR# D005980).

The Dallas Police Department (the "department") received a request for a specified investigative file. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, you state some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2022-14395 (2022). In Open Records Letter No. 2022-14395, we concluded, the department may withhold the information at issue under section 552.108(a)(1) on behalf of

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<sup>1</sup> 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). Sections 552.101, 552.130, and 552.136 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.

<sup>2</sup> 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.

the district attorney's office. The department must withhold the dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the employee number under section 552.136 of the Government Code and release the remaining information. There is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the department may continue to rely on Open Records Letter No. 2022-14395 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). To the extent the submitted information was not subject to prior ruling, we will address your arguments.

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, 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.<sup>3</sup>

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 the public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

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

In summary, the department may continue to rely on Open Records Letter No. 2022-14395 as a previous determination and withhold or release the identical information in accordance with that ruling. 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 the public citizens' dates of birth 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.

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# 963365

Enc. Submitted documents

c: Requestor  
(w/o enclosures)