



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 15, 2022

Ms. Dyanne Hargrove
Paralegal
City of Cedar Park
450 Cypress Creek Road
Cedar Park, Texas 78613

OR2022-28421

Dear Ms. Hargrove:

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# 972356 (Ref. No. 22-1312).

The Cedar Park Police Department (the "department") received a request for specified police reports and emergency protective orders pertaining to two named individuals. You state you released some information. The department states it is withholding motor vehicle record information pursuant to section 552.130(c) of the Government Code and social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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 the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A);

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). 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 id.* § 552.147(b).

see also Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977). The department states, and provides documentation showing, Exhibit C pertains to a pending criminal prosecution. Based upon 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). Thus, section 552.108(a)(1) is applicable to Exhibit C. Therefore, the department may withhold Exhibit C under section 552.108(a)(1) of the Government Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See Gov't Code* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The department states, and provides documentation showing, Exhibit D pertains to closed cases that did not result in convictions or deferred adjudications. Based on this representation, we agree section 552.108(a)(2) is applicable to Exhibit D. Therefore, the department may withhold Exhibit D under section 552.108(a)(2) of the Government Code.

Section 552.101 of the Government Code excepts “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. *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.). Therefore, 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 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Gov't Code* § 552.137(a)-(c). The e-mail address at issue is not a type specifically excluded by section 552.137(c) of the Government Code. Accordingly, the department must withhold the e-mail address it has marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure.

In summary, the department may withhold Exhibit C under section 552.108(a)(1) of the Government Code and Exhibit D under section 552.108(a)(2) of the Government Code. 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 e-mail address it has marked under section 552.137 of the Government Code. The remaining information must be released.

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,

Justin H. Miller
Attorney
Open Records Division

JHM/eb

Ref: ID# 972356

Enc. Submitted documents

c: Requestor
(w/o enclosures)