



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 26, 2022

Ms. Stephanie Hernandez
Administrative Support Specialist
City of Carrollton
P.O. Box 110535
Carrollton, Texas 75011-0535

OR2022-29679

Dear Ms. Hernandez:

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# 975273 (Reference No. T004005).

The City of Carrollton (the "city") received a request for a specified incident report. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 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 that claims an exception to disclosure under 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); *ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information at issue relates to a pending criminal investigation. Based upon your representation and our review, we find 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 the information you marked. Accordingly, the city may withhold the information you marked under section 552.108(a)(1) of the Government Code.

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 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.). However, we note the requestor may be the authorized representative of the named individual, and thus, may have a right of access to the named individual’s date of birth. *See* Gov’t Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, if the requestor is not acting as the authorized representative of the named individual, the city must withhold the date of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. Conversely, to the extent the requestor is acting as an authorized representative of the named individual, the city may not withhold the named individual’s date of birth.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov’t Code § 552.130. We note section 552.130 protects personal privacy. Accordingly, to the extent the requestor is acting as the authorized representative of the named individual, he has a right of access to this individual’s motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from him under section 552.130. *See id.* § 552.023 (a); ORD 481 at 4. To the extent the requestor is not acting as the authorized representative of the named individual, the city must withhold information you marked under section 552.130 of the Government Code.

Section 552.137 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). *Id.* § 552.137(a)-(c). The e-mail address at issue does not appear to be the type specifically excluded by subsection (c). As noted above, the requestor may be the authorized representative of one or more of the individuals whose e-mail addresses are at issue, and thus, may have a right of access pursuant to section 552.137(b). *See id.* § 552.137(b). Accordingly, to the extent the e-mail address in the remaining information does not belong to an individual for whom the requestor is an authorized representative, the city must withhold the e-mail address in the remaining information under section 552.137 of the Government Code, unless the individual to whom the e-mail address belongs affirmatively consents to its release. *See id.* § 552.137(b). However, to the extent the e-mail address at issue belongs to an individual for whom the

requestor is an authorized representative, the city may not withhold the e-mail address at issue under section 552.137 of the Government Code.

In summary, the city may withhold the information you marked under section 552.108(a)(1) of the Government Code. If the requestor is not acting as the authorized representative of the named individual, the city must withhold the date of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the requestor is not acting as the authorized representative of the named individual, the city must withhold information you marked under section 552.130 of the Government Code. To the extent the e-mail address in the remaining information does not belong to an individual for whom the requestor is an authorized representative, the city must withhold the e-mail address in the remaining information under section 552.137 of the Government Code, unless the individual to whom the e-mail address belongs affirmatively consents to its release. The city 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,

Jahnna Ward
Assistant Attorney General
Open Records Division

JW/mo

Ref: ID# 975273

Enc. Submitted documents

c: Requestor
(w/o enclosures)