



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 31, 2022

Ms. Tiffany Bangs
Assistant County Attorney
Harris County Institute of Forensic Sciences
1019 Congress, 15th Floor
Houston, Texas 77002

OR2022-33734

Dear Ms. Bangs:

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# 980839 (File# 22PIA0883).

The Harris County Constable's Office Precinct Four (the "constable's office") received two requests from the same requestor for information pertaining to a specified incident. You state the constable's office has released some information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state Exhibit B relates to a pending investigation or prosecution. Based on your representation and our review, we find release of Exhibit B 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, the constable's office may withhold Exhibit B under section 552.108(a)(1) of the Government Code.

Section 552.101 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.). We note the requestor has a right of access to his and his minor child’s dates of birth under section 552.023 of the Government Code and it may not be withheld from her under section 552.101 in conjunction with common-law privacy. *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). Thus, with the exception of the requestor and his child’s dates of birth, the constable’s office must withhold all public citizens’ dates of birth 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). The requestor has a right of access to the requestor’s own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. However, the constable’s office must withhold the driver’s license numbers and states of issuance that do not pertain to the requestor under section 552.130 of the Government Code.

In summary, the constable’s office may withhold Exhibit B under section 552.108(a)(1) of the Government Code. With the exception of the requestor and his child’s dates of birth, the constable’s office must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The constable’s office must withhold the driver’s license numbers and states of issuance that do not pertain to the requestor under section 552.130 of the Government Code. The constable’s office must release the remaining information.¹

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.

¹ We note the requestor has a special right of access to the information being released. *See* Fam. Code §§ 58.008(d), 261.201(k); *see also* Gov’t Code 552.023; ORD 481 at 4. Accordingly, if the constable’s office receives another request for this same information from a different requestor, it must again seek a ruling from this office.

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/jxd

Ref: ID# 980839

Enc. Submitted documents

c: Requestor
(w/o enclosures)