



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 8, 2022

Mr. James Kopp
Assistant City Attorney
City of San Antonio
315 South Santa Rosa, 6th Floor
San Antonio, Texas 78207

OR2022-34814

Dear Mr. Kopp:

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# 983011 (COSA File No. W468101).

The City of San Antonio (the "city") received a request for information pertaining to two specified incidents involving a named individual. The city claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Section 552.108(a) of the Government Code provides, in part, the following:

Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]
- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2). Section 552.108(a)(1) protects information that pertains to a pending criminal investigation or prosecution, section 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. The city claims section 552.108(a)(1) for the

submitted information and states it relates to a pending investigation and prosecution. However, the city also claims section 552.108(a)(2) for the submitted information and states it relates to a closed investigation that did not result in conviction or deferred adjudication. In light of these representations, we are unable to determine whether the submitted information relates to an ongoing criminal case or to a closed case that did not result in conviction or deferred adjudication. Additionally, we find the city has failed to establish these arguments are complementary as contemplated by the court of appeals in *City of Carrollton v. Paxton*, 490 S.W.3d 187, 196 (Tex. App.—Austin 2016, pet. denied). Thus, we find the city has failed to demonstrate the applicability of section 552.108(a)(1) or 552.108(a)(2) to the submitted information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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.). Upon review, we find the some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have marked and the submitted 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 license, 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. *See* Gov’t Code § 552.130. The city must withhold the submitted driver’s license numbers and issuing state under section 552.130 of the Government Code.

We note some of the remaining information consists of personal e-mail addresses subject to section 552.137 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). *See* Gov’t Code § 552.137(a)-(c). The e-mail addresses at issue are not a type specifically excluded by section 552.137(c). Accordingly, the city must withhold the submitted personal e-mail addresses under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure.

¹ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

In summary, the city must withhold the information we have marked and the submitted public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the submitted driver's license numbers and issuing state under section 552.130 of the Government Code. The city must withhold the submitted personal e-mail addresses under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure. 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,

Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/jxd

Ref: ID# 983011

Enc. Submitted documents

c: Requestor
(w/o enclosures)