



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 27, 2022

Sergeant Mirabelle Garza
Pharr Police Department
P.O. Box 1729
Pharr, Texas 78577

OR2022-39924

Dear Sergeant Garza:

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# 991509 (Ref. No. #P002533-100322).

The Pharr Police Department (the "department") received a request for four categories of information pertaining to a specified report number. 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.

Initially, we note the submitted body worn camera recordings are not responsive to the instant request. The department need not release non-responsive information in response to this request, and this ruling will not address that information.

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 it "has a suspended investigation into an Accident Involving Damage to Vehicle" and informs us "[t]here was no arrest for this case and no convictions or deferred adjudication in relation to this investigation." However, the department also argues, "[a]s a result of the confidential nature and ongoing investigations of the incident and the requested information" the department should withhold the information. In light of these representations, we are unable to determine whether the responsive 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 department 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 department has failed to demonstrate the applicability of section 552.108(a)(2) to the information at issue. Therefore, the department may not withhold any of the information at issue under section 552.108(a)(2) 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.”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. 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 represents an insurance provider for one of the individuals whose information may be at issue. As such, the requestor, if acting as the insured individual’s authorized representative, has a right of access to information that is protected from public disclosure by laws intended to protect the person’s privacy interests. *See* Gov’t Code § 552.023(a) (“[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). Therefore, to the extent one of the submitted dates of birth belongs to the insured individual and the requestor is acting as the insured individual’s authorized representative, the department may not withhold that date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent one of the submitted dates of birth belongs to the insured individual and the requestor is not acting as the insured individual’s authorized representative, the department must withhold that date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. In either case, the department must withhold the remaining dates of birth, which do not belong to the insured individual, 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. We note section 552.130 protects privacy interests. As noted above, the requestor represents the insurance provider for one of the individuals at issue. As such, the requestor, if acting as the insured individual’s authorized representative, has a right of access to the insured individual’s motor vehicle record information. *See id.* § 552.023(a); ORD 481 at 4. However, because we are unable to determine whether the information at issue belongs to the insured individual, we must

¹ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

rule conditionally. To the extent the motor vehicle record information we have marked and the discernable license plate numbers and registration stickers belong to the insured individual and the requestor is acting as the insured individual's authorized representative, the requestor has a right of access under section 552.023 to this information, and the department may not withhold such information under section 552.130 from the requestor. To the extent the motor vehicle record information we have marked and the discernable and audible license plate numbers and registration stickers belong to the insured individual and the requestor is not acting as the insured individual's authorized representative, the department must withhold this information under section 552.130 of the Government Code. In either case, the department must withhold the motor vehicle record information we have marked and the discernable license plate numbers and registration stickers that do not belong to the insured individual under section 552.130 of the Government Code.

In summary, to the extent one of the submitted dates of birth belongs to the insured individual and the requestor is not acting as the insured individual's authorized representative, the department must withhold that date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the remaining dates of birth, which do not belong to the insured individual, under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the motor vehicle record information we have marked and the discernable and audible license plate numbers and registration stickers belong to the insured individual and the requestor is not acting as the insured individual's authorized representative, the department must withhold this information under section 552.130 of the Government Code. To the extent the motor vehicle record information we have marked and the discernable license plate numbers and registration stickers do not belong to the insured individual, the department must withhold this information under section 552.130 of the Government Code. The department must release the remaining responsive 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# 991509

Enc. Submitted documents

c: Requestor
(w/o enclosures)