



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 9, 2014

Mr. Laurence E. Boyd
Danbury City Attorney
P.O. Box 269
Angleton, Texas 77516-0269

OR2014-09802

Dear Mr. Boyd:

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# 525175.

The Danbury Police Department (the "department"), which you represent, received a request for information pertaining to a complaint the requestor made at a specified address. You state you have released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.115, 552.117, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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. 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). You state the information at issue pertains to a closed criminal investigation by the department that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to

the information you have marked. Thus, the department may withhold the information you have marked under section 552.108(a)(2) of the Government Code.¹

You raise section 552.101 of the Government Code in conjunction with the ruling in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010), for the birth dates you have marked. 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. In *Texas Comptroller*, the Texas Supreme Court held section 552.102(a) of the Government Code excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. 354 S.W.3d at 336. Accordingly, *Texas Comptroller* applies only to a public employee’s birth date maintained by the employer in an employment context. In this instance, the birth dates at issue are held by the department in a law enforcement context. Therefore, we conclude the department may not withhold the birth dates you have marked under section 552.101 of the Government Code on the basis of the ruling in *Texas Comptroller*.

You also claim the dates of birth you have marked are protected under section 552.115 of the Government Code. Section 552.115(a) provides that “[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from the requirements of Section 552.021[.]” Gov’t Code § 552.115. Section 552.115 only applies to information maintained by the bureau of vital statistics or local registration official. The department is not the Bureau of Vital Statistics or a local registration official. Accordingly, the department may not withhold the information at issue under section 552.115. *See* Open Records Decision No. 338 (1982).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s or driver’s license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov’t Code § 552.130(a). Upon review, we conclude the department must withhold the information you have marked under section 552.130.

You also assert that the dates of birth you have marked are access device numbers subject to section 552.136 of the Government Code. Section 552.136 provides that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b). An access device number is one that may be used to “(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* Upon review, we find that the department has failed to demonstrate how dates of birth constitute access device

¹As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.

numbers subject to section 552.136. Therefore, the department may not withhold any of the information at issue pursuant to section 552.136 of the Government Code.

In summary, the department may withhold the information you have marked under section 552.108(a)(2) of the Government Code. The department must withhold the information you have marked under section 552.130 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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/bhf

Ref: ID# 525175

Enc. Submitted documents

c: Requestor
(w/o enclosures)