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ATTORNEY GENERAL OF TEXAS

March 7, 2016

Mr. Michael G. Morris
For the Town of Refugio
Ostarch Hilmy Hall & McCauley, PLLC
P.O. Box 2888
Corpus Christi, Texas 78403-2888

OR2016-05221

Dear Mr. Morris:

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# 600808.

The Town of Refugio (the "town"), which you represent, received a request for the arrest report and supplemental reports pertaining to the arrest of a named individual. You state the town has released some of the requested information. You claim some of 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.

You contend portions of the submitted information are not responsive to the instant request because they do not consist of information about the named individual. However, we note the information at issue is part of the requested arrest report and supplemental reports pertaining to the arrest of the named individual. Accordingly, we find the information at issue is responsive to the request for information and we will address your argument against disclosure of this 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 reasonably 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 the submitted information relates to a pending criminal investigation. Based upon this 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) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information includes a sufficient portion of the narrative to encompass a detailed description of the offense, the identities of the arresting and investigating officers, and the age, address, race, and sex of the arrestees. *See* ORD 127. We note you have marked the entirety of the narrative portions of the submitted reports, the identities of the arresting officers, and the age, address, race, and sex of one of the arrestees as information you seek to withhold under section 552.108. Thus, with the exception of basic information, which must include a detailed description of the offenses, the identities of the arresting and investigating officers, and the age, address, race, and sex of the arrestees, you may withhold the information you have marked under section 552.108(a)(1).

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. In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *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.). The supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.² *Texas Comptroller*, 354 S.W.3d at 347-48.

¹The 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).

²Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov't Code § 552.102(a).

Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. Thus, the town must withhold the public citizen's date of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code exempts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See Gov't Code* § 552.130(a)(1)-(2). Upon review, we find the town must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, with the exception of basic information, which must include a detailed description of the offenses, the identities of the arresting and investigating officers, and the age, address, race, and sex of the arrestees, you may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The town must withhold the public citizen's date of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The town must withhold the motor vehicle record information we 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 600808

Enc. Submitted documents

c: Requestor
(w/o enclosures)