



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 2, 2016

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
450 Cypress Creek Road
Cedar Park, Texas 78613

OR2016-09892

Dear Ms. Quinn:

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# 608216 (City Reference Nos. 16-432, 16-436, and 16-486).

The City of Cedar Park and the Cedar Park Police Department (collectively, the "city") received two requests for information pertaining to a specified incident and a request for information relating to a specified restraining order. You state the city will release some information. You state the city will withhold certain social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.130, 552.108, and 552.137 of the Government Code. We have considered the exceptions 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 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). The city states the information it marked pertains to pending criminal prosecutions. Based on the city's representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v.*

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without requesting a decision from this office under the Act. Gov't Code § 552.147(b).

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, section 552.108(a)(1) is applicable to the information at issue. Accordingly, the city may withhold the information it marked under section 552.108(a)(1) of the Government Code.²

Section 552.101 of the Government Code 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. 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.³ *Texas Comptroller*, 354 S.W.3d at 347-48. 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. Accordingly, the city must generally withhold all public citizens’ dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note the first requestor has a right of access to her client’s private information, and the second and third requestors have a right of access to their own information, that would otherwise be withheld to protect their 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). Accordingly, the city may not withhold from a requestor any private information to which that requestor has a right of access.

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. Upon review, we find the

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

³Section 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).

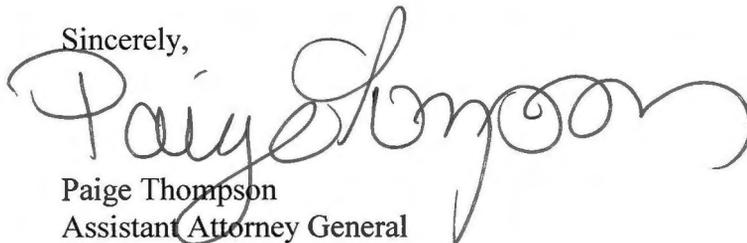
information we marked for release does not consist of motor vehicle record information subject to section 552.130. Accordingly, none of the information we marked for release may be withheld under section 552.130 of the Government Code. Nevertheless, we find the city must generally withhold the remaining information it marked, and the additional information we marked for withholding, under section 552.130 of the Government Code. However, we note section 552.130 protects personal privacy. Thus, the first requestor has a right of access to her client's motor vehicle record information and the second and third requestors have a right of access to their own motor vehicle record information under section 552.023 of the Government Code, and the city may not withhold under section 552.130 any motor vehicle record information from a requestor who has a right of access to that motor vehicle record information. *See id.* § 552.023(a); ORD 481 at 4.

In summary, the city may withhold the information it marked under section 552.108(a)(1) of the Government Code. The city must withhold all public citizens' dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy; however, the city may not withhold the dates of birth from a requestor who has a right of access to the information under section 552.023 of the Government Code. With the exception of the information we marked for release, the city must withhold the motor vehicle record information it marked, and the additional information we marked for withholding, under section 552.130 of the Government Code; however, the city may not withhold the marked motor vehicle record information from a requestor who has a right of access to the information under section 552.023 of the Government Code. 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 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,

A handwritten signature in black ink, appearing to read "Paige Thompson", written in a cursive style.

Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 608216

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)