



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 7, 2016

Ms. Ann-Marie Sheely  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR2016-13636A

Dear Ms. Sheely:

This office issued Open Records Letter No. 2016-13636 (2016) on June 15, 2016. We have determined the prior ruling should be corrected. *See* Gov't Code §§ 552.306, .352. Accordingly, we hereby withdraw the prior ruling. This decision is substituted for Open Records Letter No. 2016-13636 and serves as the correct ruling. *See generally id.* § 552.011 (providing Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of Act). This ruling was assigned ID# 625505.

The Travis County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified incident. You state you will release some information. You state the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered your argument and reviewed the submitted representative sample of information.<sup>1</sup>

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

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

body claiming section 552.108(a)(1) must 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 prosecution. We note, however, the information at issue includes a DIC-24 Statutory Warning. Because a copy of this document was previously released to the arrestee, we find you have not shown release of the document will interfere with the detection, investigation, or prosecution of crime, and this document may not be withheld under section 552.108(a)(1). *See Gov't Code* § 552.108(a)(1). Because the remaining information at issue has not been previously released, we conclude release of this information 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) (court delineates law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, we find section 552.108(a)(1) is applicable to the remaining information at issue.

Section 552.108, however, 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* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information and the DIC-24 form, the district attorney's office may withhold the submitted information under section 552.108(a)(1) 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.”<sup>2</sup> *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.<sup>3</sup> *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>Section 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).

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 district attorney's office must withhold the public citizen's date of birth in the DIC-24 form 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 district attorney's office must withhold the motor vehicle information we have marked in the DIC-24 form under section 552.130 of the Government Code.

In summary, with the exception of basic information and the DIC-24 form, the district attorney's office may withhold the submitted information under section 552.108(a)(1) of the Government Code. The district attorney's office must withhold the public citizen's date of birth in the DIC-24 form under section 552.101 of the Government Code in conjunction with common-law privacy. The district attorney's office must withhold the motor vehicle information we have marked in the DIC-24 form 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](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,



Katelyn Blackburn-Rader  
Assistant Attorney General  
Open Records Division

KB-R/bw

Ref: ID# 625505

Enc. Submitted documents

c: Requestor  
(w/o enclosures)