



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 5, 2016

Mr. O. Charles Buenger
Counsel for the City of Mexia
Buenger & Associates
3203 Robinson Drive
Waco, Texas 76706

OR2016-15202

Dear Mr. Buenger:

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# 616878.

The City of Mexia (the "city"), which you represent, received a request for information pertaining to a specified incident. You state you have released some information. You argue some of the submitted information is not subject to the Act. You also claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

We first address your claim that the Act does not apply to the submitted complaints. We note the Act generally requires the disclosure of information maintained by a "governmental body." *See* Gov't Code § 552.021. While the Act's definition of a "governmental body" is broad, it specifically excludes "the judiciary." *See id.* § 552.003(1)(A), (B). When an individual or entity acts at the direction of the judiciary as its agent, information prepared or collected by the agent is within the judiciary's constructive possession and is not subject to the Act. *See generally* Open Records Decision No. 513 at 3 (1988) (information in grand jury's constructive possession not subject to the Act). In Open Records Decision No. 646 (1996), this office determined that specific records regarding individuals on probation and subject to the direct supervision of a court that are held by a community supervision and corrections department are not subject to the Act because such records are held on behalf of the judiciary. *See* Open Records Decision No. 646 at 4 (1996); *see also* Open Records Decision No. 236 at 2-3 (1980).

We understand you to assert the submitted complaints are records maintained by a court. You claim these records comprise records of the judiciary which are not subject to required release under the Act. Upon review, however, we find you have failed to demonstrate that the city holds these records on behalf of the judiciary as an agent of the judiciary. See ORD 646 at 2-3; *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.— San Antonio 1983, no writ) (in determining whether governmental entity falls within judiciary exception, this office looks to whether governmental entity maintains relevant records as agent of judiciary with regard to judicial, as opposed to administrative, functions). Accordingly, we find that the information at issue does not constitute records of the judiciary for purposes of the Act. We will, therefore, consider whether this information is excepted from public disclosure.

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 must explain how and why section 552.108 is applicable to the information at issue. See *id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note the submitted information includes a citation. Because the citation has been provided to the individual who was cited, we find that release of this information will not interfere with the detection, investigation, or prosecution of crime. See Gov’t Code § 552.108(a)(1). Therefore, the city may not withhold the citation under section 552.108(a)(1). You state the remaining information relates to a pending criminal case. Based on this representation and our review, we conclude section 552.108(a)(1) is applicable to the remaining information. 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 that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, with the exception of the citation, the city 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.”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

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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. 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 withhold the date of birth we have marked under section 552.101 in conjunction with common-law privacy.

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). We conclude the city must withhold the information we have marked under section 552.130.

In summary, with the exception of the citation, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing the citation, the city must withhold the date of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the information we have marked under section 552.130 of the Government Code.

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,



Paige Lay
Assistant Attorney General
Open Records Division

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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).

Ref: ID# 616878

Enc. Submitted documents

c: Requestor
(w/o enclosures)