



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 19, 2016

Mr. Jose Hernandez
Records Supervisor
City of Edinburg
1702 South Closner Boulevard
Edinburg, Texas 78539

OR2016-16293

Dear Mr. Hernandez:

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# 618993 (Edinburg Reference #87114).

The Edinburg Police Department (the "department") received a request for all calls for service and incident reports pertaining to a specified address during a specified time period. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 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 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 information you marked in report number 16-19051 relates to a pending criminal investigation. You further state the information you marked in report numbers 15-20101, 15-24893, 15-27639, and 15-37950 relates to criminal cases that are pending prosecution with the Hidalgo County District Attorney's Office. Based on your representation and our review, we find release of the information you marked 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 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 you marked in report numbers 15-20101, 15-24893, 15-27639, 15-37950, and 16-19051. However, we find the department has failed to demonstrate the release of the remaining information you marked would interfere with law enforcement or a pending criminal case. Therefore, the department may not withhold the remaining information you marked under section 552.108(a)(1) of the Government Code.

Additionally, 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). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, a detailed description of the offense. See ORD 127 at 3-4. In this instance, you seek to withhold the narrative portions of the reports at issue under section 552.108(a)(1). The remaining portions of the reports do not contain information sufficient to satisfy the requirement that a “detailed description of the offense” be released as basic information. See *id.* Accordingly, we determine the department must release sufficient portions of the narratives to encompass a detailed description of the offenses to satisfy the required release of basic information pursuant to *Houston Chronicle*. Thus, with the exception of basic information, which must be released, the department may withhold the information you marked in report numbers 15-20101, 15-24893, 15-27639, 15-37950, and 16-19051 under section 552.108(a)(1) of the Government Code.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.” Gov’t Code § 552.101. Section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has also found the identities of victims of sexual abuse are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). This office has held common-law privacy protects the identity of a juvenile offender. See Open Records Decision No. 394 (1983); cf. Fam. Code § 58.007(c).

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. *Indus.*

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

Found., 540 S.W.2d 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 *Tex. 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. Because "the right of privacy is purely personal," that right "terminates upon the death of the person whose privacy is invaded." *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); see also *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) ("action for invasion of privacy can be maintained only by a living individual whose privacy is invaded" (quoting RESTATEMENT (SECOND) OF TORTS § 652I)); Attorney General Opinions JM-229 (1984) ("the right of privacy lapses upon death"), H-917 (1976) ("We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death."); Open Records Decision No. 272 (1981) ("the right of privacy is personal and lapses upon death").

Upon review, we find most of the information you marked and the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the information we have marked for release, the department must withhold the information you marked, the information we have marked, and all living, identifiable public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information either pertains to an individual who has been de-identified and whose privacy interests are, thus, protected, or is not highly intimate or embarrassing information or is of legitimate public interest. Therefore, none of the remaining information may be withheld 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(a). We note the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, motor vehicle record information that pertains solely to deceased individuals may not be withheld under section 552.130. See *Moore*, 589 S.W.2d at 491; see also

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).

Attorney General Opinions JM-229, H-917; ORD 272 at 1. Upon review, we find some of the motor vehicle record information at issue pertains to an individual who is deceased. Accordingly, with the exception of the information we have marked for release, the department must withhold the motor vehicle record information you marked and we have marked under section 552.130 of the Government Code.

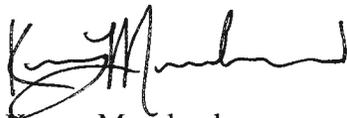
Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. Gov't Code § 552.147. Upon review, we find the department may withhold the social security numbers you marked under section 552.147 of the Government Code.

In summary, with the exception of basic information, which must be released, the department may withhold the information you marked in report numbers 15-20101, 15-24893, 15-27639, 15-37950 and 16-19051 under section 552.108(a)(1) of the Government Code. With the exception of the information we have marked for release, the department must withhold the information you marked, the information we have marked, and all living, identifiable public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we have marked for release, the department must withhold the motor vehicle record information you marked and we have marked under section 552.130 of the Government Code. The department may withhold the social security numbers you marked under section 552.147 of the Government Code. The department 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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 618993

Enc. Submitted documents

c: Requestor
(w/o enclosures)