



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 10, 2012

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2012-14320

Dear Ms. Middlebrooks:

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# 464641 (PIR No. 2012-07569).

The Dallas Police Department (the "department") received a request for reports and photographs related to a specified incident. You claim some of the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.¹

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 reasonably 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). You have marked the information the department seeks to withhold under section 552.108. You state the release of the marked information would interfere with a pending criminal prosecution. Based on your representations, we conclude the department may withhold the marked

¹This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

information under section 552.108(a)(1) of the Government Code.² *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).

Next, we address your claims under section 552.101 of the Government Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision[.]” Gov’t Code § 552.101. This exception encompasses information other statutes make confidential. We understand you to contend some of the submitted information is confidential under section 552.101 in conjunction with section 521.051(a) of the Business and Commerce Code.³ Section 521.051(a) provides that

[a] person may not obtain, possess, transfer, or use personal identifying information of another person without the other person’s consent, and with intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the other person’s name.

Bus. & Comm. Code § 521.051(a) (formerly Bus. & Comm. Code § 48.101(a)). “Personal identifying information” is defined as “information that alone or in conjunction with other information identifies an individual” and includes an individual’s date of birth. *Id.* § 521.002(a)(1)(A). You contend some of the submitted information falls within the definition of “personal identifying information” under section 521.002(a)(1)(A). *See id.* We note section 521.051(a) does not prohibit the transfer of another person’s personal identifying information unless the transfer is made with the intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the other person’s name without that person’s consent. *See id.* § 521.051(a). In this instance, the department’s release of the information at issue would be for the purpose of complying with the Act and not “with intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value[.]” *See id.* Therefore, section 521.051(a) does not prohibit the department from transferring the information at issue. *See id.* We therefore conclude the department may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 521.051 of the Business and Commerce Code.

You also claim section 552.101 of the Government Code in conjunction with common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540

²As we are able to make this determination, we need not address your other arguments against disclosure of the marked information.

³Although you cite to section 521.002 of the Texas Business and Commerce Code, that section defines terms for purposes of chapter 521 of the Business and Commerce Code and does not make information confidential.

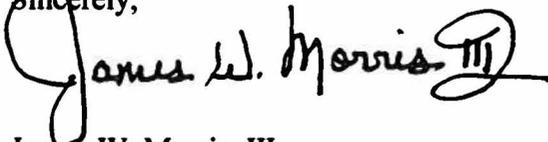
S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. You seek to withhold the dates of birth of members of the public on privacy grounds. We note one of the dates of birth at issue is that of a deceased individual. Privacy is a personal right that lapses at death. Thus, the deceased individual has no right to privacy. See *Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981). We also note the dates of birth of living members of the public are not protected by common-law privacy under section 552.101. See Open Records Decision No. 455 at 7 (1987) (home addresses, telephone numbers, and dates of birth not private). We therefore conclude the department may not withhold the dates of birth at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department may withhold the marked information related to the pending prosecution under section 552.108(a)(1) of the Government Code. The rest of the submitted 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 464641

Enc: Submitted information

c: Requestor
(w/o enclosures)