



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 18, 2012

Ms. J. Middlebrooks  
Assistant City Attorney  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2012-14846

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# 465204 (DPD ORR# 2012-07715).

The Dallas Police Department (the "department") received a request for information concerning a specified investigation. You claim the submitted 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 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 body claiming section 552.108 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). You

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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 those records contain substantially different types of information than those submitted to this office.

state the information you have marked relates to a pending prosecution by the district attorney, who objects to its release because it would interfere with the investigation and prosecution of a 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). Based on these representations and our review, we agree the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.<sup>2</sup>

You contend the date of birth you have marked is excepted from disclosure 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681–82. Upon review, we find this information is not highly intimate or embarrassing and may not be withheld under section 552.101 of the Government Code on that basis. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010).

Section 552.101 of the Government Code also encompasses section 521.051(a) of the Business and Commerce Code,<sup>3</sup> which provides:

[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 name. *Id.* § 521.002(a)(1)(A). You assert the date of birth you have marked meets the definition of “personal identifying information” under section 521.002(a)(1). *See id.* However, section 521.051(a) does not prohibit the transfer of personal identifying information of

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<sup>2</sup>As our ruling is dispositive, we do not address your remaining arguments against disclosure for this information.

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

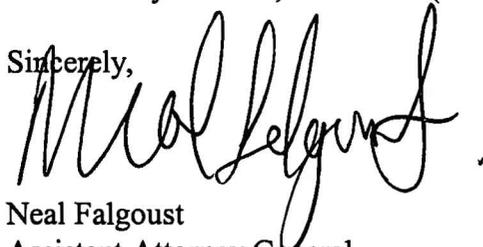
another person unless the transfer is made with the intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the other person's name without that person's consent. *See id.* § 521.051(a). In this instance, the department's release of the information at issue 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 [.]” *Id.* Therefore, section 521.051(a) does not prohibit the department from transferring the information at issue. *See id.* Thus, we conclude the department may not withhold the date of birth you have marked under section 552.101 of the Government Code in conjunction with section 521.051 of the Business and Commerce Code.

In summary, the department may withhold the information you have marked under section 552.108(a)(1) 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.oag.state.tx.us/open/index\\_orl.php](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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/ag

Ref: ID# 465204

Enc. Submitted documents

c: Requestor  
(w/o enclosures)