



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 20, 2012

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

OR2012-15002

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# 467089 (ORR # 2012-08772).

~~The Dallas Police Department (the "department") received a request for report number 155392z. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.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 encompasses information made confidential by other statutes. We understand you to contend some of the submitted information is excepted under section 552.101 in conjunction with section 521.051(a) of the Business and Commerce Code, which provides:

¹We 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 that submitted to this office.

[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); *see also id.* § 1.201(b)(27) (definition of “person” includes a government, governmental subdivision, agency, or instrumentality). You assert the birth date you have marked meets the definition of “personal identifying information” under section 521.002(a)(1)(A). However, section 521.051(a) does not prohibit the transfer of personal identifying information of 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[.]” *See 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 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.

Section 552.101 also encompasses the common-law right to 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 met. *Id.* at 681-82. Common-law privacy protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). However, the dates of birth of members of the public are not excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 at 7 (1987) (home addresses, telephone numbers, dates of birth not protected under privacy). Therefore, the city has failed to demonstrate the information you have marked is highly intimate or embarrassing and of no legitimate public interest. Therefore, none of it may be withheld under section 552.101 on the basis of common-law privacy.

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 release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A)

(governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information at issue pertains to a suspended criminal investigation in which the statute of limitations has not run. You inform us the investigation may be reopened as further information is developed. Based on your representation and our review of the information, we conclude release of the marked information would interfere with the detection, investigation, or 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 describes law enforcement interests that are present in active cases), *writ ref'd per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, the department may withhold the information you have marked under section 552.108(a)(1).

Section 552.130 of the Government Code exempts from disclosure information that relates to a motor vehicle title or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(2). Therefore, the department must withhold the information you have marked under section 552.130.

In summary, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code and must withhold the information you have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

Ref: ID# 467089

Enc. Submitted documents

c: Requestor
(w/o enclosures)
