



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 4, 2012

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

OR2012-15800

Dear Ms. Armstrong:

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# 468371 (ORR# 2012-09344).

The Dallas Police Department (the "department") received a request for information related to a traffic accident involving a named individual and a specified vehicle. You claim some of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.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. This exception encompasses information other statutes make confidential. You contend the date of birth you have marked is confidential under section 552.101 in conjunction with section 521.051(a) of the Business and Commerce Code, which states:

(a) A person may not obtain, possess, transfer, or use personal identifying information of another person without the other person's consent, and with

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).

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)). You state the marked date of birth falls within the definition of "personal identifying information" under section 521.002(a)(1)(A) of the Business and Commerce Code. *See id.* § 521.002(a)(1)(A) (defining "personal identifying information" as consisting of "information that alone or in conjunction with other information identifies an individual"). Section 521.051(a) does not prohibit the transfer of another person's personal identifying information, however, 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 marked date of birth 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.* Thus, 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 the marked date of birth under section 552.101 of the Government Code in conjunction with section 521.051 of the Business and Commerce Code.

You also contend the marked date of birth is confidential under section 552.101 in conjunction with section 32.51(b) of the Penal Code, which provides:

(b) A person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses an item of:

- (1) identifying information of another person without the other person's consent;
- (2) information concerning a deceased natural person, including a stillborn infant or fetus, that would be identifying information of that person were that person alive, if the item of information is obtained, possessed, transferred, or used without legal authorization; or
- (3) identifying information of a child younger than 18 years of age.

Penal Code § 32.51(b).² You state the marked date of birth also falls within the definition of "identifying information" under section 32.51(a)(1)(A) of the Penal Code. *See id.* § 32.51(a)(1)(A) (defining "identifying information" as consisting of "information that alone or in conjunction with other information identifies a person" and includes a person's date of birth). Section 32.51(b) does not prohibit the transfer of identifying information of another person, however, unless the transfer is made "with the intent to harm

²Although you argue the date of birth at issue is confidential under section 32.52 of the Penal Code, we understand you to mean section 32.51 based on the substance of your argument.

or defraud another[.]” *See id.* § 32.51(b). In this instance, the department’s release of the date of birth at issue would be for the purpose of complying with the Act and not with the intent to harm or defraud another. Thus, section 32.51(b) does not prohibit the department from transferring the information at issue. We therefore conclude the department may not withhold the marked date of birth under section 552.101 of the Government Code in conjunction with section 32.51 of the Penal Code.

You also claim section 552.101 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 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. Although you seek to withhold the marked date of birth on privacy grounds, we 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 date of birth at issue under section 552.101 of the Government Code in conjunction with 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 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 state the release of the information you have marked would interfere with a pending criminal case. Based on your representations, we conclude the department may withhold the marked information under section 552.108(a)(1) of the Government Code. *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).

We note section 552.130 of the Government Code is applicable to some of the remaining information at issue.³ This section excepts from disclosure information related to a motor vehicle title or registration issued by an agency of this state or another state or country. *See Gov’t Code § 552.130(a)(2)*. We have marked motor vehicle information the department must withhold under section 552.130 of the Government Code.

In summary, the department (1) may withhold the information related to the pending case you have marked under section 552.108(a)(1) of the Government Code and (2) must

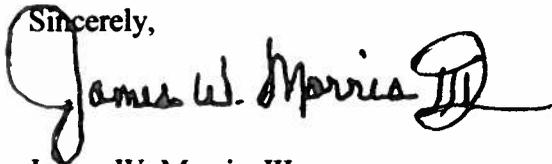
³This office will raise section 552.130 on behalf of a governmental body, as this section is a mandatory exception to disclosure. *See Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001)* (mandatory exceptions).

withhold the motor vehicle information we have marked under section 552.130 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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large, stylized initial "J".

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

JWM/bhf

Ref: ID# 468371

Enc: Submitted documents

c: Requestor
(w/o enclosures)