



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 10, 2012

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

OR2012-16212

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# 472750 (PIR No. 2012-11807).

The Dallas Police Department (the "department") received a request for information related to a specified incident number. 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.<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 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 prosecution. 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*

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<sup>1</sup>This 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).

*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, which 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 made confidential by other statutes. You contend the dates of birth you have marked are excepted from disclosure under section 552.101 in conjunction with section 521.051 of the Business and Commerce Code, which provides in part:

(a) 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” means “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 assert the marked dates of birth meet the definition of “personal identifying information” under section 521.002(a)(1) of the Business and Commerce Code. *See id.* § 521.002(a)(1). We note section 521.051(a) of the Business and Commerce Code 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.* Thus, section 521.051(a) of the Business and Commerce Code does not prohibit the department from transferring the requested information. Therefore, the department may not withhold the marked dates of birth 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 in conjunction with common-law privacy, which protects information that is highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and not of legitimate concern to the public. *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. *See id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. We note the dates of birth of members of the public are generally not highly intimate or embarrassing. *See Open Records Decision No. 455 at 7 (1987)* (home addresses, telephone numbers, dates of birth not protected under privacy). Thus, we find you have failed to

demonstrate how any of the information you have marked is highly intimate or embarrassing and not of legitimate public interest. Therefore, the department may not withhold any of the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

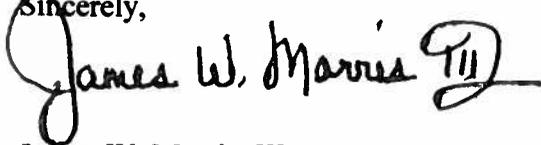
Lastly, section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle title or registration issued by an agency of this state or another state or country. *See* Gov't Code § 552.130(a)(2). We agree the department must withhold the motor vehicle information you have marked under section 552.130.

In summary, the department (1) may withhold the information related to the pending prosecution you have marked under section 552.108(a)(1) of the Government and (2) must withhold the motor vehicle information you 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](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 initial "J" and a stylized "III" at the end.

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

JWM/bhf

Ref: ID# 472750

Enc: Submitted documents

c: Requestor  
(w/o enclosures)