



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 6, 2012

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

OR2012-17760

Dear Ms. Armstrong and Ms. McClellan:

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# 470302 (ORR Nos. 2012-10248, 2012-10249, 2012-10250, 2012-10324, 2012-10325, 2012-10328, 2012-10387, 2012-10288, 2012-10389, 2012-10462, 2012-10463, 2012-10466, 2012-10712).

The Dallas Police Department (the "department") received thirteen separate requests for information related to a specified incident. We understand you have redacted a driver's license number under section 552.130 of the Government Code.¹ You claim some of the submitted 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 submitted representative sample of information.²

Initially, you note some information requested by the final requestor did not exist at the time the department received the other requests at issue. In responding to a request for

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) of the Government Code without the necessity of seeking a decision from the attorney general. See Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See *id.* § 552.130(d), (e).

²We assume that 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 that those records contain substantially different types of information than that submitted to this office.

information under the Act, a governmental body is not required to disclose information that did not exist at the time the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2. Thus, the department need not release any information to the first twelve requestors that did not exist at the time their requests were made.

Next, you argue portions of the submitted information are protected by section 552.101 of the Government Code, which excepts from public 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. You argue the marked date of birth is excepted from disclosure under section 552.101 in conjunction with section 32.51 of the Penal Code.³ Section 32.51 of the Penal Code provides, in relevant part,

(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). “Identifying information” means “information that alone or in conjunction with other information identifies a person” and includes a person’s date of birth. *Id.* § 32.51(a)(1)(A). You assert the marked date of birth meets the definition of “identifying information” under section 32.51(a)(1)(A) of the Penal Code. However, section 32.51(b) does not prohibit the transfer of identifying information of another person unless the transfer is made “with the intent to harm or defraud another[.]” *See id.* § 32.51(b). 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 the intent to harm or defraud another. Therefore, section 32.51(b) of the Penal Code does not prohibit the department from transferring the requested information in this instance. Accordingly, we find 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.

³Although you argue the date of birth is made confidential by section 32.52 of the Penal Code, we understand you to argue section 32.51 based on the substance of your argument.

You also argue the marked date of birth is excepted from disclosure under section 552.101 in conjunction with section 521.051 of the Business and Commerce Code. Section 521.051 of the Business and Commerce Code provides,

(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 date of birth meets 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). As noted above, 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) of the Business and Commerce Code does not prohibit the department from transferring the requested information. Accordingly, 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.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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 demonstrated. *See id.* at 681-82. The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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 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). Upon review, we find you have failed to demonstrate how the date of birth you have marked is highly intimate or embarrassing and not of legitimate public interest. Therefore, the department may not withhold any portion of the information it has marked under section 552.101 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 claiming section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information you have marked and indicated on the submitted CDs relates to an ongoing criminal investigation. Based on your representations and our review, we find that release of the information you have marked and indicated on the submitted CDs would interfere with the detection, investigation, or prosecution of crime. Therefore, section 552.108(a)(1) is applicable to the marked and indicated information. *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). Accordingly, the department may withhold the marked and indicated information under section 552.108(a)(1) of the Government Code.

In summary, the department may withhold the information it has marked and indicated on the submitted CDs 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, 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 470302

Enc. Submitted documents

c: 10 Requestors
(w/o enclosures)
