



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 12, 2014

Mr. Laurence E. Boyd  
Counsel for the City of Danbury  
Attorney at Law  
P.O. Box 269  
Angleton, Texas 77516-0269

OR2014-07965

Dear Mr. Boyd:

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# 522131.

The City of Danbury (the "city"), which you represent, received two requests from the same requestor for all records pertaining to a specified incident. You indicate the city is withholding social security numbers pursuant to section 552.147(b) of the Government Code.<sup>1</sup> You state the city has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.115, 552.130, and 552.136 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us the city asked the requestor to clarify the scope of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests

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<sup>1</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

<sup>2</sup>Although you do not raise section 552.102 of the Government Code in your brief, we understand you to raise this exception based on the substance of your argument.

clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified). You state the city has not received a response to the request for clarification. Therefore, the city is not required to release any responsive information for which it has not received clarification. But if the requestor responds to the clarification request, the city must seek a ruling from this office before withholding any responsive information from the requestor. *See* Gov't Code § 552.222; *City of Dallas*, 304 S.W.3d at 387.

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(a)(1) 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 state the submitted information pertains to a pending criminal investigation and prosecution. We note the information at issue includes a citation. Because a copy of the citation was provided to the individual who was cited, we find release of the citation will not interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). We therefore conclude the citation may not be withheld under section 552.108(a)(1). Based on your representation and our review, we conclude the release of the remaining information would interfere with the detection, investigation, or prosecution of 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). Thus, section 552.108(a)(1) is applicable to the remaining information.

However, we note, and you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note the basic information does not include dates of birth or motor vehicle record information encompassed by section 552.130 of the Government Code. *See* ORD 127 at 3-4. Thus, with the exception of the basic information and the citation, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.

You argue the date of birth you marked in the submitted citation is subject to sections 552.101, 552.102, 552.115, and 552.136 of the Government Code. Section 552.101 excepts “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 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *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 marked date of birth is highly intimate or embarrassing and not of legitimate public interest. Therefore, the city may not withhold the information at issue under section 552.101 in conjunction with common-law privacy.

We also understand you to argue the marked date of birth is protected by section 552.101 of the Government Code in conjunction with constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. ORD 455 at 4. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find you have failed to demonstrate how the marked date of birth falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the city may not withhold the information at issue under section 552.101 on the basis of constitutional privacy.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Thus, under *Texas Comptroller* section 552.102(a) is applicable to the birth date of an employee of a governmental body in a record maintained by his or her employer in an employment context. The marked date of birth does not consist of a date of birth of a public employee maintained by an employer in an employment context. Thus, we find the information at issue is not subject to section 552.102(a) of the Government Code, and the city may not withhold it on that basis.

Section 552.115 of the Government Code excepts from disclosure "[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official[.]" Gov't Code § 552.115(a). Section 552.115 is applicable only to information maintained by the bureau of vital statistics or local registration officials. See Open Records Decision No. 338 (1982) (finding that statutory predecessor to section 552.115

excepted only those birth and death records which are maintained by the bureau of vital statistics and local registration officials). Because section 552.115 does not apply to information held by the city, no portion of the information at issue may be withheld under section 552.115.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the city must withhold the motor vehicle record information you marked, and the additional information we have marked, under section 552.130 of the Government Code.<sup>3</sup>

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). Section 552.136(a) defines "access device" as "a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a). Upon review, we find you have not demonstrated how the marked date of birth consists of an access device number for purposes of section 552.136. Accordingly, the city may not withhold the information at issue under section 552.136 of the Government Code.

In summary, with the exception of the basic information and the citation, which must generally be released, the city may withhold the information you marked under section 552.108(a)(1) of the Government Code. In releasing the citation, the city must withhold the motor vehicle record information you marked and the additional information we marked under section 552.130 of the Government Code.

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.

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<sup>3</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, the Texas legislature has amended section 552.130 to allow a governmental body to redact the information described in subsection 552.130(a) 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* Gov't Code § 552.130(d), (e). Thus, the statutory amendments to section 552.130 of the Government Code supercede Open Records Decision No. 684. Therefore, a governmental body may redact information subject to subsections 552.130(a)(1) and (a)(3) only in accordance with section 552.130, not Open Records Decision No. 684.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Claire Morris Sloan". The signature is written in black ink and is positioned below the word "Sincerely,".

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 522131

Enc. Submitted documents

c: Requestor  
(w/o enclosures)