



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 24, 2016

Ms. Claudene Marshall
Assistant General Counsel
Texas A&M University System
301 Tarrow Street, 6th Floor
College Station, Texas 77840-7896

OR2016-14434

Dear Ms. Marshall:

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# 615740 (Ref. Nos. W000661-040616, W000674-040716, W000678-040916, and W000687-041116).

Texas A&M University (the "university") received four requests from different requestors for information relating to a specified incident. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) 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: (1) 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 explain how and why the release of the information at issue 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, 710 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or

¹We understand the university to raise sections 552.101 and 552.130 based on the university's markings in the submitted information.

prosecution of criminal conduct. Open Records Decision No. 474 at 4-5 (1987). Where a governmental body possesses information relating to a pending case of another law enforcement agency, the governmental body may withhold the information under section 552.108(a)(1) if it demonstrates the information relates to the pending case and this office is provided with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information. You have submitted a letter from the Brazos County District Attorney's Office (the "district attorney's office") in which the district attorney's office objects to the release of some of the submitted information because it pertains to a pending criminal prosecution. Based on this representation, we conclude the release of the information at issue 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, the university may withhold the information you have marked on behalf of the district attorney's office under section 552.108(a)(1) of the Government Code.²

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 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. In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.³ *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3.

In this instance, we note the information at issue contains the dates of birth of some of the requestors. Section 552.023(a) of the Government Code states that a person or a person's

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

³Section 552.102(a) 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).

authorized representative has a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, the respective requestors have a right of access to their own dates of birth under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); ORD 481 at 4. Therefore, the university may not withhold the respective requestors' own information from them under common-law privacy. Accordingly, the university must generally withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy; however, the university may not withhold the respective requestors' own dates of birth from them under section 552.101 on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we find the motor vehicle record information you have marked, in addition to the information we have marked, are subject to section 552.130 of the Government Code. However, because section 552.130 protects privacy interests, the respective requestors have a right of access to their own motor vehicle record information pursuant to section 552.023. Thus, the university must generally withhold the marked information under section 552.130 of the Government Code; however, to the extent the marked motor vehicle record information belongs to any requestor, the university may not withhold it from that requestor under section 552.130 of the Government Code.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *Id.* § 552.147(a). We note the submitted information contains some of the requestors' social security numbers. Section 552.147 is based on privacy principles and each requestor has a right of access to his own social security number. *See id.* § 552.023(a); ORD 481. Thus, the university may not withhold the requestors' own social security numbers from them under section 552.147 of the Government Code. Accordingly, the university may generally withhold the social security numbers within the remaining information under section 552.147 of the Government Code; however, the university may not withhold the requestors' own social security numbers from them under section 552.147 of the Government Code.

In summary, the university may withhold the information you have marked on behalf of the district attorney's office under section 552.108(a)(1) of the Government Code. The university must generally withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy; however, the university may not withhold the respective requestors' own dates of birth from them under section 552.101 on that basis. The university must generally withhold the marked information under section 552.130 of the Government Code; however, to the extent the

marked motor vehicle record information belongs to any requestor, the university may not withhold it from that requestor under section 552.130 of the Government Code. The university may generally withhold the social security numbers within the remaining information under section 552.147 of the Government Code; however, the university may not withhold the requestors' own social security numbers from them under section 552.147 of the Government Code. The university must release the remaining information to the respective requestors.⁴

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.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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/bw

Ref: ID# 615740

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the requestors have a special right of access to some of the information being released to the respective requestors. See Gov't Code § 552.023(b); ORD 481 at 4. Thus, if the university receives another request for this information from a different requestor, then the university must again seek a decision from this office.