



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 4, 2016

Ms. Amy Benya
Senior Assistant General Counsel
Lone Star College
5000 Research Forest Drive
The Woodlands, Texas 77381-4356

OR2016-22278

Dear Ms. Benya:

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# 634838 (LSC File No. LMC0001458).

Lone Star College System (the "college") received a request for information pertaining to incidents involving the requestor. You state the college will release some of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

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 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 submitted information relates to a pending criminal prosecution. Based on your representation, we conclude release of most of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v.*

¹Although the city did not raise sections 552.101, 552.117, or 552.130 in its brief, we understand these exceptions to be raised based on your markings.

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, however, the submitted information includes a criminal trespass warning. Because copies of this document was provided to the person who was cited, we find its release will not interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the college may not withhold the criminal trespass warning, which we have marked for release, under section 552.108. However, we find section 552.108(a)(1) of the Government Code is applicable to the remaining information you have marked. Thus, with the exception of the criminal trespass warning, the college may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”² Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. 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.

We note the requestor has a special right of access under section 552.023 of the Government Code to information that would otherwise be withheld to protect her privacy. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access to information held by governmental body that relates to person and that is protected from

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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).

public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, with the exception of the requestor's date of birth, which we have marked for release, the college must withhold the public citizens' dates of birth you have marked as well as the date of birth we have marked in the criminal trespass warning under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a)(1). We note section 552.130 protects personal privacy. Thus, the requestor has a right to her own motor vehicle information under section 552.023 of the Government Code and it may not be withheld from her under section 552.130. *See id.* § 552.023(a) (person or person's authorized representative has special right of access to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, with the exception of the requestor's motor vehicle information, which we have marked for release, the college must withhold the motor vehicle record information you have marked as well as the motor vehicle information we have marked in the criminal trespass warning under section 552.130 of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). However, section 552.117(a)(1) is applicable only to information a governmental body holds in an employment context. Upon review, we find the college does not maintain the submitted criminal investigation in an employment capacity. Therefore, the college may not withhold any of the remaining information under section 552.117 of the Government Code.

In summary, with the exception of the criminal trespass warning, which must be released, the college may withhold the information you have marked under section 552.108(a)(1) of the Government Code. With the exception of the requestor's date of birth, which we have marked for release, the college must withhold the public citizens' dates of birth you have marked as well as the date of birth we have marked in the criminal trespass warning under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the requestor's motor vehicle information, which we have marked for release, the college must withhold the motor vehicle record information you have marked as well as the motor vehicle information we have marked in the criminal trespass warning under

section 552.130 of the Government Code. The college must release the remaining information.

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,



Jesse Harvey
Assistant Attorney General
Open Records Division

JH/bw

Ref: ID# 634838

Enc. Submitted documents

c: Requestor
(w/o enclosures)