



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 7, 2015

Mr. Michael Phelps
Senior Paralegal
Harris County Appraisal District
P.O. Box 920975
Houston, Texas 77292-0975

OR2015-20964

Dear Mr. Phelps:

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# 582087 (HCAD Ref. No. 15-3187E).

The Harris County Appraisal District (the "district") received a request for information concerning a specified property. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, 552.136, 552.137, and 552.149 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, some of which consists of representative samples.¹

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 section 22.27 of the Tax Code, which provides:

- (a) Rendition statements, real and personal property reports, attachments to those statements and reports, and other information the owner of property provides to the appraisal office in connection with the appraisal of the property, including income and expense information related to a property

¹We assume 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 those records contain substantially different types of information than those submitted to this office.

filed with an appraisal office and information voluntarily disclosed to an appraisal office or the comptroller about real or personal property sales prices after a promise it will be held confidential, are confidential and not open to public inspection. The statements and reports and the information they contain about specific real or personal property or a specific real or personal property owner and information voluntarily disclosed to an appraisal office about real or personal property sales prices after a promise it will be held confidential may not be disclosed to anyone other than an employee of the appraisal office who appraises property except as authorized by Subsection (b) of this section.

(b) Information made confidential by this section may be disclosed:

...

(2) to the person who filed the statement or report or the owner of property subject to the statement, report, or information or to a representative of either authorized in writing to receive the information[.]

Tax Code § 22.27(a), (b)(2). We understand the district is an “appraisal office” for purposes of section 22.27(a). You explain the information in Exhibit 3 consists of reports provided to the district by the property owner in connection with an appraisal of the owner’s property pursuant to section 22.27(a). You further explain the information you marked in Exhibit 4 relates to sales prices voluntarily disclosed to the district after a promise of confidentiality. You state none of the exceptions in section 22.27(b) apply in this instance. Based on these representations and our review, we conclude the district must withhold the information in Exhibit 3 and the information you marked in Exhibit 4 under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code.

Section 552.101 of the Government Code also 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 member of the public’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.² *Texas Comptroller*, 354 S.W.3d at 347–48. Based on *Texas Comptroller*, the court of appeals

²Section 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).

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. Accordingly, the district must withhold all dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure 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. Gov't Code § 552.130(a)(1). The district must withhold the driver's license number you marked under section 552.130 of the Government Code.³

Section 552.136(b) 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." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). You state the iFile number you marked can be used to access confidential property information of value to property owners and third party professionals involved in the protests of property tax appraisals. Based on your representations and our review, we agree the iFile number at issue is an access device number for purposes of section 552.136(a). Accordingly, the district must withhold the iFile number you marked and the utility account number you marked under section 552.136(b) of the Government Code.

Section 552.137 of the Government Code provides, "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). *Id.* § 552.137(a)–(c). The district must withhold the e-mail address you marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its release.

Section 552.149 of the Government Code provides:

- (a) Information relating to real property sales prices, descriptions, characteristics, and other related information received from a private entity by the comptroller or the chief appraiser of an appraisal district under Chapter 6, Tax Code, is excepted from the requirements of [the Act].

Id. § 552.149(a). The applicability of section 552.149 is limited to those counties having a population of 50,000 or more. *Id.* § 552.149(e). We note Harris County has a population of more than 50,000. You state the information you marked in Exhibit 4 relates to real property sales prices, descriptions, characteristics, and related information provided to the appraisal district by a private entity. Based on this representation, we conclude the district must

³This ruling is dispositive of your arguments under section 11.48 of the Tax Code.

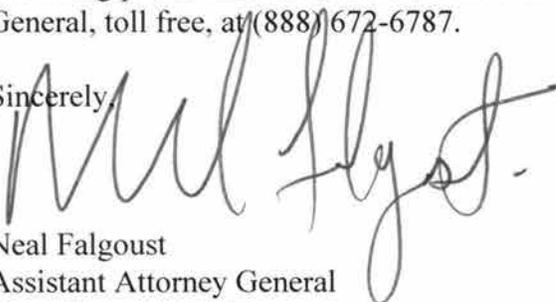
withhold the information you marked in Exhibit 4 under section 552.149(a) of the Government Code.

In summary, the district must withhold the information in Exhibit 3 and the information you marked in Exhibit 4 under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code. The district must withhold all dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy. The district must withhold the driver's license number you marked under section 552.130 of the Government Code. The district must withhold the iFile number you marked and the utility account number you marked under section 552.136(b) of the Government Code. The district must withhold the e-mail address you marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its release. The district must withhold the information you marked in Exhibit 4 under section 552.149(a) of the Government Code. The district 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/bhf

Ref: ID# 582087

Enc. Submitted documents

c: Requestor
(w/o enclosures)