



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 13, 2015

Mr. Ryan S. Sullivan
Public Information Officer
Harris County Sheriff's Office
1200 Baker Street
Houston, Texas 77002

OR2015-21456

Dear Mr. Sullivan:

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# 583481.

The Harris County Sheriff's Office (the "sheriff's office") received a request for information related to a specified report. The sheriff's office released information responsive to the request but made redactions without requesting a decision from this office. *See* Gov't Code § 552.130(c) (authorizing a governmental body to redact motor vehicle record information without requesting a ruling). Pursuant to section 552.130(d) of the Government Code, the requestor has asked this office to review the information and render a decision as to whether it is excepted from disclosure under section 552.130(a) of the Government Code. We have considered the position of the sheriff's office and reviewed the information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ 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 member of the public's date of birth is private, the Third Court of Appeals looked

¹The 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).

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 concluded the privacy rights of public employees apply equally to members of the public, and thus, dates of birth of members of the public are also protected by common-law privacy pursuant to section 552.101 of the Government Code. *City of Dallas*, 2015 WL 3394061, at *3. However, a person, or that person's authorized representative, has a right of access to her own date of birth. *See* Gov't Code § 552.023. Accordingly, the sheriff's office must withhold all dates of birth of members of the public, other than the requestor's clients', 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 and a motor vehicle title or registration issued by an agency of this state or another state or country. *Id.* § 552.130(a). As previously noted, a person, or her authorized representative, has a right of access to her own information. *See id.* § 552.023. Accordingly, the sheriff's office must withhold only the motor vehicle record information we marked under section 552.130 of the Government Code. The requestor has a right of access to the remaining information and it may not be withheld under section 552.130 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). Accordingly, the sheriff's office must withhold the e-mail address we marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its release.

In summary, the sheriff's office must withhold all dates of birth of members of the public, other than the requestor's clients', under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold only the motor vehicle record information we marked under section 552.130 of the Government Code. The sheriff's office must withhold the e-mail address we marked under section 552.137 of the

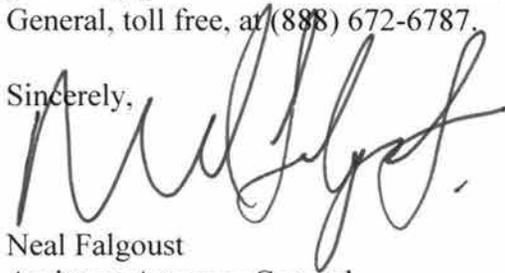
²Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

Government Code, unless the owner of the e-mail address affirmatively consents to its release. The sheriff's office must release the remaining information.³

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# 583481

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As the requestor has a special right of access to some of the information, the sheriff's office must again seek a ruling from our office if it receives another request for this same information from a different requestor.