



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 28, 2015

Mr. Mark LaForge
Assistant District Attorney
Fort Bend County District Attorney's Office
301 Jackson
1422 Eugene Heimann Circle, Suite 20234
Richmond, Texas 77469-3108

OR2015-22575

Dear Mr. LaForge:

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# 584722.

The Fort Bend County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified case. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code and privileged under rule 192.5 of the Texas Rules of Civil Procedure. We have considered your arguments and reviewed the submitted representative sample of information.¹ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Initially, we note some of the submitted information, which we have indicated, is not responsive to the instant request because it does not pertain to the specified case. This ruling does not address the public availability of any information that is not responsive to the request, and the district attorney's office is not required to release such information in response to this request.

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 that those records contain substantially different types of information than that submitted to this office.

Next, we address the requestor's assertion the district attorney's office did not meet its procedural obligations under section 552.301 of the Government Code. Section 552.301 prescribes the procedures a governmental body must follow in asking this office to determine whether information is excepted from public disclosure under the Act. *See id.* § 552.301(a). Pursuant to section 552.301(b), within ten business days of receipt of the request the governmental body must ask for a decision from this office and state which exceptions apply to the requested information. *Id.* § 552.301(b). Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request: (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. The district attorney's office received the request on July 22, 2015. We note this office does not count the date the request was received for the purpose of calculating a governmental body's deadlines under the Act. The district attorney's office informs us, and provides documentation showing, it sought clarification on August 5, 2015. *See id.* § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). The district attorney's office states, and provides documentation showing, the district attorney's office received the requestor's clarification on August 7, 2015. We have no indication the district attorney's office acted in bad faith in seeking clarification. In this case, we consider the district attorney's office's ten-day period for requesting a decision under section 552.301(b) to have commenced on August 7, 2015, the date the district attorney's office received of the requestor's response to the request for clarification. *See City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). Accordingly, the district attorney's office's ten- and fifteen-business-day deadlines were August 21, 2015, and August 28, 2015, respectively. The envelope in which the district attorney's office requested a ruling to this office bears a post meter mark of August 21, 2015, and the envelope in which the district attorney's office submitted the information required by section 552.301(e) bears a post meter mark of August 28, 2015. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, we find the district attorney's office complied with the requirements of section 552.301 of the Government Code.

Next, we note the submitted responsive information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

- (a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Id. § 552.022(a)(1). The submitted responsive information consists of information from a completed investigation that is subject to section 552.022(a)(1). The district attorney's office must release the information pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. *See id.* You raise rule 192.5 of the Texas Rules of Civil Procedure for portions of the responsive information. We note the attorney work-product privilege is found at rule 192.5, which has been held to be other law within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). However, those rules are applicable only to "actions of a civil nature." *See* TEX. R. CIV. P. 2. Thus, because the submitted responsive information pertains to a criminal case, rule 192.5 is not applicable to the submitted responsive information. Therefore, the district attorney's office may not withhold the information at issue on the basis of the work-product privilege in Texas Rule of Civil Procedure 192.5. As sections 552.101, 552.130, 552.136, and 552.137 of the Government Code make information confidential under the Act, we will consider the applicability of these exceptions to the submitted responsive information.² We will also consider the district attorney's arguments under section 552.108 for the submitted responsive 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." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

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).

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile Justice Department, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report;
or

(B) another child of the parent, managing conservator, or legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (l); Act of May 29, 2015, 84th Leg., R.S., ch. 734 § 82, 2015 Tex. Sess. Law Serv. 2218, 2244 (Vernon) (to be codified as an amendment to Fam. Code § 261.201(k)). We note the submitted responsive information was used in an investigation of alleged or suspected child abuse. *See* Fam. Code § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes); Act of June 1, 2015, 84th Leg., R.S., ch. 1273, § 4, 2015 Tex. Sess. Law Serv. 4310, 4312 (Vernon) (to be codified as an amendment to Fam. Code § 261.001(1)). Accordingly, we find this information is subject to chapter 261 of the Family Code. However, we note the requestor represents the child victim named in the report and the parents of the child victim, and the requestor’s clients are not alleged to have committed the abuse. Therefore, the district attorney’s office may not withhold the submitted responsive information from the requestor

under section 261.201(a). Act of May 29, 2015, 84th Leg., R.S., ch. 734 § 82, 2015 Tex. Sess. Law Serv. 2218, 2244 (Vernon). However, we note section 261.201(1)(2) states any information excepted from required disclosure under the Act or other law may still be withheld from disclosure. *See* Fam. Code § 261.201(1)(2). Thus, we will consider your remaining arguments.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Section 58.007 provides, in pertinent part, as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Id. § 58.007(c). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007. *See* Act of June 1, 2015, 84th Leg., R.S. ch. 935, § 18, 2015 Tex. Sess. Law Serv. 3224, 3233-34 (Vernon) (to be codified as amendments to Fam. Code § 51.03); Act of May 31, 2015, 84th Leg., R.S. ch. 944, § 4, 2015 Tex. Sess. Law Serv. 3268, 3269-70 (Vernon) (to be codified as an amendment to Fam. Code § 51.03(b)); Act of June 1, 2015, 84th Leg., R.S. ch. 1273, § 3, 2015 Tex. Sess. Law Serv. 4310, 4311 (Vernon) (to be codified as an amendment to Fam. Code § 51.03(b)) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the conduct at issue. *See* Fam. Code § 51.02(2). Some of the submitted responsive information involves juvenile delinquent conduct that occurred on or after September 1, 1997. Thus, this information is subject to section 58.007(c). In this instance, it does not appear any of the exceptions to confidentiality under section 58.007 apply. Accordingly, the district attorney’s office must withhold the information we indicated under section 552.101 in conjunction with section 58.007(c) of the Family Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common-law privacy 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. In Open Records Decision No. 393 (1983), this office concluded generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No. 393 at 2 (1983); see Open Records Decision No. 339 (1982); see also *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

The remaining responsive information pertains to a report of an alleged sexual assault. The requestor in this case knows the identity of the alleged victim. Thus, the entirety is generally protected by common-law privacy. However, as noted above, the requestor represents the parents of the minor child and the minor child whose privacy interest is at issue. See Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, the requestor has a right of access to information pertaining to his clients that would otherwise be confidential under common-law privacy. Accordingly, the district attorney's office may not withhold the remaining responsive information in its entirety from this requestor under section 552.101 on the basis of common-law privacy.

As noted above, section 552.101 of the Government Code also encompasses subsections 261.201(1)(1) and 261.201(1)(3) of the Family Code. Subsection 261.201(1)(1) and subsection 261.201(1)(3) provide, before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under section 261.201(k) of the Family Code, any personally identifying information of any other child victims or witnesses at issue and the identity of the person who made the report of alleged child abuse or neglect must be redacted. Fam. Code § 261.201(1)(1), (3). Therefore, the district attorney's office must withhold the information we indicated under section 552.101 of the Government Code in conjunction with subsection 261.201(1)(1) of the Family Code and the information we indicated under section 552.101 of the Government Code in conjunction with subsection 261.201(1)(3) of the Family Code.

Section 552.108 of the Government Code provides, in part, the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

...

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4), (b)(3). A governmental body raising section 552.108 must reasonably explain the applicability of section 552.108. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You raise subsections 552.108(a)(4) and 552.108(b)(3) for some of the remaining responsive information. You explain the information at issue includes the work product of the district attorney's office personnel. Based on your representation, we understand some of the information at issue consists of information that was prepared by an attorney representing the state in the course of preparing for criminal litigation or mental impressions or legal reasoning of an attorney representing the state. Upon review, we conclude section 552.108(a)(4) is applicable to the information we marked. Accordingly,

the district attorney's office may withhold the information we marked under section 552.108(a)(4) of the Government Code.³

The remaining information at issue includes communications with non-privileged parties, including communications between the Missouri City Police Department and the victim's family. Upon review, we find you have failed to demonstrate the remaining information at issue was prepared by an attorney representing the state or that it reflects the mental impressions or legal reasoning of an attorney representing the state. *See id.* § 552.108(a)(4), (b)(3). Therefore, the district attorney's office may not withhold any of the remaining information at issue under subsection 552.108(a)(4) or subsection 552.108(b)(3) of the Government Code.

Section 552.101 of the Government Code also encompasses article 62.005 of the Code of Criminal Procedure. Some of the remaining responsive information, which we have marked, contains sex offender registration information subject to article 62.005(b). Article 62.051 of the Code of Criminal Procedure requires a sex offender registrant to provide the following information for the Texas Department of Public Safety ("DPS") sex offender registration database: the person's full name; date of birth; sex; race; height; weight; eye color; hair color; social security number; driver's license number; shoe size; home address; each alias; home, work, or cellular telephone number; a recent color photograph, or if possible, an electronic image of the person; a complete set of fingerprints; the type of offense the person was convicted of; the age of the victim; the date of conviction; the punishment received; an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; an indication of each license, as defined by article 62.005(g), that is held or sought by the person; an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution; the identification of any online identifier established or used by the person; and any other information required by the department. *See* Crim. Proc. Code art. 62.051(c). This information is public information with the exception of the person's social security number; driver's license number; home, work, or cellular telephone number; the identification of any online identifier established or used by the person; all information required by DPS outside of the enumerated categories of information including any information regarding an employer's name, address, or telephone number; and any information that would identify the victim of the offense for which the person is subject to registration. *See id.* art. 62.005(b). We note statutes governing the release of specific information generally prevail over the common law. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when it directly conflicts with common-law principle); *see also Cash Am. Intern. Inc. v. Bennett*, 35 S.W.3d 12, 16 (Tex. 2000) (statute depriving person of common-law right will not be extended beyond its plain meaning or applied to cases not

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

clearly within its purview). Thus, the district attorney's office must withhold or release the information subject to article 62.005 of the Code of Criminal Procedure, which we have marked, in accordance with article 62.005(b) of the Code of Criminal Procedure.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F and subchapter E-1 of the Government Code. *See Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 21, 2015 Tex. Sess. Law Serv. 4327, 4337 (Vernon) (to be codified as an amendment to Gov't Code § 411.083).* Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. Gov't Code § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F or subchapter E-1 of the Government Code. We note section 411.083 does not apply to active warrant information or other information relating to one's current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Further, CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find the information we marked and indicated consists of CHRI the district attorney's office must withhold under section 552.101 in conjunction with section 411.083 of the Government Code. However, we find you have not demonstrated any portion of the remaining responsive information consists of CHRI for purposes of chapter 411 of the Government Code, and the district attorney's office may not withhold it under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses chapter 611 of the Health and Safety Code. Section 611.002 provides in pertinent part:

- (a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

- (b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Upon review, we find the information we marked consists of mental health records for purposes of chapter 611 of the Health and Safety Code. Accordingly, the district attorney’s office must withhold the information we marked and indicated under section 552.101 of the Government Code in conjunction with chapter 611 of the Health and Safety Code. However, we find the remaining responsive information does not constitute mental health records subject to chapter 611 of the Health and Safety Code, and the district attorney’s office may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Upon review, we find the information we marked constitutes a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician. Accordingly, the district attorney’s office must withhold the marked information under section 552.101 of the Government Code in conjunction with the MPA. However, we find you have not demonstrated any of the remaining responsive information constitutes medical records for purposes of the MPA, and the district attorney’s office may not withhold any of the remaining responsive information on that basis.

Section 552.101 of the Government Code also encompasses the constitutional right to privacy. Constitutional privacy protects two kinds of interests. See *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the “zones of privacy,” pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. See *Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); Open Records Decision No. 455 at 3-7 (1987). The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. See *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual’s privacy interest against the public’s interest in the information. See ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for “the most intimate aspects of human affairs.” *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492).

This office has applied privacy to protect certain information about incarcerated individuals. See Open Records Decision Nos. 430 (1985), 428 (1985), 185 (1978). Citing *State v. Ellefson*, 224 S.E.2d 666 (S.C. 1976) as authority, this office held that those individuals who correspond with inmates possess a “first amendment right . . . to maintain communication with [the inmate] free of the threat of public exposure;” and that this right would be violated by the release of information that identifies those correspondents, because such a release would discourage correspondence. ORD 185. The information at issue in Open Records Decision No. 185 was the identities of individuals who had corresponded with inmates, and our office found “the public’s right to obtain an inmate’s correspondence list is not sufficient to overcome the first amendment right of the inmate’s correspondents to maintain communication with him free of the threat of public exposure.” *Id.* Implicit in this holding is the fact that an individual’s association with an inmate may be intimate or embarrassing. In Open Records Decision Nos. 428 and 430, our office determined that inmate visitor and mail logs that identify inmates and those who choose to visit or correspond with inmates are protected by constitutional privacy because people who correspond with inmates have a First Amendment right to do so that would be threatened if their names were released. ORDs 430, 428. Further, we recognized inmates had a constitutional right to visit with outsiders that could also be threatened if their names were released. See also ORD 185. The rights of those individuals to anonymity was found to outweigh the public’s interest in this information. *Id.*; see ORD 430 (list of inmate visitors protected by constitutional privacy of both inmate and visitors). Upon review, we find the district attorney’s office must withhold the information we marked under section 552.101 of the Government Code in conjunction with constitutional privacy.

You argue portions of the remaining responsive information are confidential under section 552.101 of the Government Code in conjunction with common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, 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.⁴ *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.

Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district attorney's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. Further, with the exception of the dates of birth within the information subject to section 62.005(b) of the Code of Criminal Procedure, the district attorney's office must withhold the public citizens' dates of birth we indicated in the remaining responsive information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining responsive information is highly intimate or embarrassing information and of no legitimate public interest, and it may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

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 district attorney's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. However, we find none of the remaining responsive information consists of motor vehicle record information subject to section 552.130. Accordingly, none of the remaining responsive information may be withheld under section 552.130 of the Government Code.

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.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, the district attorney's office must withhold the information we marked under section 552.136 of the Government Code.

⁴Section 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).

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, an e-mail address that a governmental entity maintains for one of its officials or employees, or an e-mail address provided to a governmental body by a person who has or seeks a contractual relationship with the governmental body or by the contractor’s agent. *See id.* § 552.137(c). We note the requestor has a right of access to his clients’ e-mail addresses under section 552.137(b). *See id.* § 552.137(b). Upon review, we find, with the exception of the e-mail addresses belonging to the requestor’s clients, the district attorney’s office must withhold the e-mail addresses in the remaining responsive information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosures or subsection (c) applies.

Section 552.147 of the Government Code provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147(a). We note the requestor has a right of access to his clients’ social security numbers. *See id.* § 552.023. Thus, with the exception of the social security numbers belonging to the requestor’s clients, the district attorney’s office may withhold the social security numbers of the living individuals in the remaining responsive information under section 552.147 of the Government Code.⁵

In summary, the district attorney’s office must withhold the information we indicated under section 552.101 in conjunction with section 58.007(c) of the Family Code, the information we indicated under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code, and the information we indicated under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. The district attorney’s office may withhold the information we marked under section 552.108(a)(4) of the Government Code. The district attorney’s office must withhold or release the information subject to article 62.005 of the Code of Criminal Procedure, which we have marked, in accordance with article 62.005(b) of the Code of Criminal Procedure. The district attorney’s office must withhold (1) the information we marked and indicated under section 552.101 in conjunction with section 411.083 of the Government Code, (2) the information we marked and indicated under section 552.101 of the Government Code in conjunction with chapter 611 of the Health and Safety Code, (3) the information we marked under section 552.101 of the Government Code in conjunction with the MPA, (4) the information we marked under section 552.101 of the Government Code in conjunction with constitutional privacy, and (5) the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the

⁵Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without requesting a decision from this office under the Act. Gov’t Code § 552.147(b).

information subject to section 62.005(b) of the Code of Criminal Procedure, the district attorney's office must withhold the public citizens' dates of birth we indicated in the remaining responsive information under section 552.101 of the Government Code in conjunction with common-law privacy. The district attorney's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code and the information we marked under section 552.136 of the Government Code. With the exception of the e-mail addresses belonging to the requestor's clients, the district attorney's office must withhold the e-mail addresses in the remaining responsive information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosures or subsection (c) applies. With the exception of the social security numbers belonging to the requestor's clients, the district attorney's office may withhold the social security numbers of the living individuals in the remaining responsive information under section 552.147 of the Government Code. The district attorney's office must release the remaining responsive 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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 584722

Enc. Submitted documents

c: Requestor
(w/o enclosures)