



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 6, 2015

Ms. Kristen N. Lee  
Assistant County Attorney  
Harris County  
1019 Congress, 15th Floor  
Houston, Texas 77002

OR2015-23453

Dear Ms. Lee:

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# 586295 (C.A. File No. 15PIA0375).

The Harris County Tax Assessor-Collector's Office (the "county") received two requests for information pertaining to (1) voter registration information of a named individual and (2) certain tax information related to a specified address during a specified period of time. You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes. Section 25.025 of the Tax Code states, in pertinent part:

(a) This section applies only to:

(1) a current or former peace officer as defined by Article 2.12, Code of Criminal Procedure[.]

...

(b) Information in appraisal records under Section 25.02 is confidential and is available only for the official use of the appraisal district, this state, the comptroller, and taxing units and political subdivisions of this state if:

(1) the information identifies the home address of a named individual to whom this section applies; and

(2) the individual chooses to restrict public access to the information on the form prescribed for that purpose by the comptroller under Section 5.07.

(c) A choice made under Subsection (b) remains valid until rescinded in writing by the individual.

(d) This section does not prohibit the public disclosure of information in appraisal records that identifies property according to an address if the information does not identify an individual who has made an election under Subsection (b) in connection with the individual's address.

Tax Code § 25.025(a)(1), (b)-(d). Section 25.02 of the Tax Code prescribes the information that must be contained within appraisal records. *See id.* § 25.02. However, upon review, we find you have failed to demonstrate the submitted information, which includes voter registration applications and tax payment checks and coupons, consists of information in appraisal records for the purposes of section 25.02. Thus, we conclude the county may not withhold the submitted information under section 552.101 in conjunction with section 25.025.

Section 552.101 of the Government Code also encompasses section 13.004 of the Election Code, which pertains to voter qualifications and registration. Section 13.004 of the Election Code provides, in pertinent part, the following:

(a) The registrar may not transcribe, copy, or otherwise record a telephone number furnished on a registration application.

...

(c) The following information furnished on a registration application is confidential and does not constitute public information for purposes of [the Act]:

(1) a social security number;

(2) a Texas driver's license number;

(3) a number of a personal identification card issued by the Department of Public Safety;

(4) an indication that an applicant is interested in working as an election judge; or

(5) the residence address of the applicant, if the applicant is a federal judge or state judge, as defined by Section 13.0021, the spouse of a federal judge or state judge, or an individual to whom Section 552.1175, Government Code, applies and the applicant:

(A) included an affidavit with the registration application describing the applicant's status under this subdivision, including an affidavit under Section 13.0021 if the applicant is a federal judge or state judge or the spouse of a federal judge or state judge;

(B) provided the registrar with an affidavit describing the applicant's status under this subdivision, including an affidavit under Section 15.0215 if the applicant is a federal judge or state judge or the spouse of a federal judge or state judge; or

(C) provided the registrar with a completed form approved by the secretary of state for the purpose of notifying the registrar of the applicant's status under this subdivision.

...

(d) The voter registrar or other county official who has access to the information furnished on a registration application may not post the following information on a website:

(1) a telephone number;

(2) a social security number;

(3) a driver's license number or a number of a personal identification card;

(4) a date of birth; or

(5) the residence address of a voter who is a federal judge or state judge, as defined by Section 13.0021; or the spouse of a federal judge

or state judge, if the voter included an affidavit with the application under Section 13.0021 or the registrar has received an affidavit submitted under Section 15.0215.

Elec. Code § 13.004(a), (c), (d). The information in Exhibit B-1 consists of the voter registration applications of one individual. We understand you to assert the telephone number of the voter is confidential under section 13.004. However, for information to be confidential under section 552.101, the provision of law must explicitly require confidentiality. A confidentiality requirement will not be inferred from a provision's structure. *See* Open Records Decision Nos. 658 at 4 (1998) (stating statutory confidentiality provision must be express and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (stating, as general rule, statutory confidentiality requires express language making information confidential), 465 at 4-5 (1987). Section 13.004(a) prohibits the county from transcribing, copying, or recording a voter's telephone number. *See* Elec. Code § 13.004(a). Section 13.004(d) prohibits the posting of certain specified information on a website. *See id.* § 13.004(d). Because neither section 13.004(a) nor section 13.004(d) explicitly provides information is confidential, we find the county may not withhold the telephone number of the voter from the requestor under section 552.101 in conjunction with section 13.004.

Exhibit B-1 includes the voter's social security number, Texas driver's license number, and residence addresses. The county must withhold the voter's social security number and Texas driver's license number we have marked in Exhibit B-1 under section 552.101 in conjunction with section 13.004(c).<sup>1</sup> *See id.* § 13.004(c)(1)-(2). With respect to the voter's residence addresses, section 13.004(c)(5), in part, protects the residence address of an individual to whom section 552.1175 of the Government Code applies if the applicant provides the affidavits or form described in subsections 13.004(c)(5)(A) through (C). *See id.* § 13.004(c)(5). Section 552.1175 applies to certain individuals listed in section 552.1175(a), including "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" Gov't Code § 552.1175(a)(1). The voter at issue is a peace officer; however, we are unable to determine if he is currently a licensed peace officer and if he has provided the affidavits or form described in subsections 13.004(c)(5)(A) through (C). Thus, we rule conditionally. To the extent the voter at issue is currently a licensed peace officer and provides the affidavits or form described in subsections 13.004(c)(5)(A) through (C), the county must withhold the residence addresses we have marked in Exhibit B-1 under section 552.101 in conjunction with section 13.004(c).<sup>2</sup> To the extent the voter at issue is not currently a licensed peace officer or does not provide the affidavits or form described in subsections 13.004(c)(5)(A)

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<sup>1</sup>As our ruling is dispositive, we need not address your arguments against disclosure of this information.

<sup>2</sup>In that event, as our ruling is dispositive, we need not address your arguments against disclosure of this information.

through (C), the county may not withhold the residence addresses we have marked in Exhibit B-1 under section 552.101 on that basis.

Section 552.101 of the Government Code also 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. Types of information considered intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* ORD 545 (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy). Whether the public's interest in obtaining personal financial information is sufficient to justify its disclosure must be determined on a case-by-case basis. *See* ORD 373. 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. *Indus. Found.*, 540 S.W.2d 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.<sup>3</sup> *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 portions of the remaining information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the county must withhold the

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<sup>3</sup>Section 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).

information we have marked under section 552.101 in conjunction with common-law privacy.<sup>4</sup>

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of enumerated individuals who request this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a). We note section 552.117 applies only to information held by a governmental body in an employment context. Thus, information that is not held in an employment context may not be withheld under section 552.117. Upon review, we find county does not hold the submitted information in an employment context. Thus, the information at issue may not be withheld under section 552.117.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment context and the individual elects to keep the information confidential. *Id.* § 552.1175. As previously discussed, section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(1). The submitted information pertains to a peace officer and is held by the county in a non-employment context. Thus, to the extent the individual whose information is at issue is currently a licensed peace officer and he elects to restrict access to his information in accordance with section 552.1175(b), the county must withhold the information we have marked under section 552.1175. If the officer whose information is at issue is no longer a licensed peace officer or no election is made, the county may not withhold this information under section 552.1175. None of the remaining information is information that is subject to section 552.1175; thus, the county may not withhold the remaining information on that basis.

We note portions of the remaining information in Exhibit B-2 are subject to section 552.136 of the Government Code.<sup>5</sup> Section 552.136 states, “Notwithstanding any other provision of this chapter, 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 also id.* § 552.136(a) (defining “access device”). Accordingly, the county must withhold the information we have marked in Exhibit B-2 under section 552.136.

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

<sup>5</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the county must withhold the voter's social security number and Texas driver's license number we have marked in Exhibit B-1 under section 552.101 of the Government Code in conjunction with section 13.004(c) of the Election Code. To the extent the voter at issue is currently a licensed peace officer and provides the affidavits or form described in subsections 13.004(c)(5)(A) through (C) of the Election Code, the county must withhold the residence addresses we have marked in Exhibit B-1 under section 552.101 of the Government Code in conjunction with section 13.004(c) of the Election Code. The county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the individual whose information is at issue is currently a licensed peace officer and he elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, the county must withhold the information we have marked under section 552.1175 of the Government Code. The county must withhold the information we have marked in Exhibit B-2 under section 552.136. The county 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](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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/eb

Ref: ID# 586295

Enc. Submitted documents

c: Requestor  
(w/o enclosures)