



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 22, 2015

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

OR2015-26913

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# 591823 (HSCO File Number #14SO500538).

The Harris County Sheriff's Office (the "sheriff's office") received a request for a specified incident report pertaining to a robbery. You state you will release some information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). You state the submitted information pertains to an open and active criminal investigation. However, we note the submitted information pertains to an aggravated robbery offense. The statute of limitations for aggravated robbery is five years from the date of the offense. *See Penal Code* § 29.03 (aggravated robbery is a felony); *see also Crim. Proc. Code* art. 12.01(4)(A) (indictment or information for robbery must be presented within five years),

12.03(d) (“any offense that bears the title ‘aggravated’ shall carry the same limitation period as the primary crime”). More than five years have elapsed since the events giving rise to the submitted information. You have not informed this office any criminal charges were filed within this limitations period. Thus, we find you have failed to demonstrate the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Therefore, the sheriff’s office may not withhold the submitted information 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.”<sup>1</sup> *Id.* § 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.<sup>2</sup> *Tex. 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. Thus, the sheriff’s office must withhold all public citizens’ dates of birth 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 sheriff’s office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the sheriff’s office must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The

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<sup>1</sup>The 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).

<sup>2</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).

sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released.

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,

A handwritten signature in black ink that reads "Cole Hutchison". The signature is written in a cursive style with a large initial "C".

Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/bhf

Ref: ID# 591823

Enc. Submitted documents

c: Requestor  
(w/o enclosures)