



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 12, 2016

Mr. Vance Hinds
Assistant County and District Attorney
Ellis County
109 South Jackson
Waxahachie, Texas 75165

OR2016-00916

Dear Mr. Hinds:

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# 593826.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for calls for service involving the requestor and another named individual at a specified address during a defined time period, including any domestic violence calls. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the information we have marked is not responsive to the instant request because it does not involve the requestor and the other named individual. This ruling does not address the public availability of non-responsive information, and the sheriff's office is not required to release non-responsive information in response to this request.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 the doctrine of common-law privacy,

¹As we make this determination, we need not address your remaining arguments against disclosure of this information.

which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *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.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 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. We note the information at issue includes the requestor's date of birth. Section 552.023 of the Government Code gives a person a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interests. *See generally* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, the requestor has a special right of access to her own date of birth, and the sheriff's office may not withhold it from her under section 552.101 in conjunction with common-law privacy. Further, we find you have not demonstrated the remaining responsive information you have marked is highly intimate or embarrassing and not of legitimate public concern. Thus, the remaining responsive information may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. As no further exceptions to disclosure are raised, the sheriff's office must release the responsive 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.

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).

³We note the information being released contains private information to which the requestor has a right of access. *See* Gov't Code § 552.023(a). If the sheriff's office receives another request for this particular information from a different requestor, then the sheriff's office should again seek a decision from this office.

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,

A handwritten signature in black ink that reads "Britni Ramirez". The signature is written in a cursive, flowing style.

Britni Ramirez
Assistant Attorney General
Open Records Division

BR/bhf

Ref: ID# 593826

Enc. Submitted documents

c: Requestor
(w/o enclosures)