



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 18, 2016

Mr. Brendan W. Guy  
Assistant Criminal District Attorney  
County of Victoria  
205 North Bridge, Suite 301  
Victoria, Texas 77901-8085

OR2016-08686

Dear Mr. Guy:

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# 606058.

The Victoria County Sheriff's Office (the "sheriff's office") received a request for information related to a specified incident involving a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 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 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, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy.

*See, e.g.*, Open Records Decision Nos. 545 (1990) (common-law privacy protects 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).

Furthermore, 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>1</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.

Upon review, we find the information you have marked, as well as the additional information we have marked, satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the sheriff's office must generally withhold the information you have marked, as well as the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note the requestor may be the authorized representative of one of the individuals whose information is at issue, and may have a right of access to information pertaining to the individual at issue that would otherwise be confidential under common-law privacy. *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 individuals request information concerning themselves). Because we are unable to determine whether the requestor is the authorized representative of the individual at issue we must rule conditionally. Accordingly, if the requestor is not acting as the authorized representative of the individual specified in the instant request, the sheriff's office must withhold the information you have marked, as well as the additional information we have marked, under section 552.101 in conjunction with common-law privacy. However, if the requestor is acting as the authorized representative of this individual, the sheriff's office may not withhold the information pertaining to the individual at issue under section 552.101 on the basis of common-law privacy. In that instance, the sheriff's office must withhold the

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<sup>1</sup>Section 552.102(a) exempts 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).

remaining information marked under section 552.101 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(a). Upon review, we find the sheriff's office must generally withhold most of the information we have marked under section 552.130. Additionally, we note section 552.130 protects personal privacy. As stated above, the requestor may be the authorized representative of one of the individuals whose motor vehicle record information is at issue. If so, the requestor has a right of access to the motor vehicle record information pertaining to this individual under section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, if the requestor is acting as the authorized representative of this individual, the sheriff's office may not withhold the information pertaining to the individual at issue under section 552.130. In this instance, the sheriff's office must withhold the remaining information we have marked under section 552.130 of the Government Code. However, if the requestor is not acting as the authorized representative of the individual specified in the instant request, the sheriff's office must withhold the information we have marked under section 552.130 of the Government Code. In any event, we find no portion of the remaining information consists of motor vehicle record information subject to section 552.130, and the sheriff's office may not withhold any portion of the remaining information on that basis.

In summary, if the requestor is not acting as the authorized representative of the individual specified in the instant request, the sheriff's office must withhold the information you have marked and we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, as well as the information we have marked under section 552.130 of the Government Code. However, if the requestor is acting as the authorized representative of this individual, the sheriff's office may not withhold the information pertaining to the individual at issue. In that instance, the sheriff's office must withhold the remaining information you have marked and we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, as well as the remaining information we have marked under section 552.130 of the Government Code. The sheriff's office must release the remaining information.<sup>2</sup>

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.

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<sup>2</sup>We note the information being released contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting an attorney general decision under the Act. *See* Gov't Code § 552.147(b).

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,

  
Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 606058

Enc. Submitted documents

c: Requestor  
(w/o enclosures)