



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 2, 2016

Ms. Tanya E. Pino  
Assistant County Attorney  
County of Montgomery  
501 North Thompson, Suite 300  
Conroe, Texas 77301

OR2016-09783

Dear Ms. Pino:

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# 608339 (ORR# 16PIA102).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for report number 16-4010490. You claim some of 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 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. *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>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. Thus, the sheriff's office must generally withhold the submitted date of birth, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. In this instance, however, we note the requestor represents the insurance provider of the individual whose information is at issue. Thus, the requestor may be the authorized representative of that individual, and may have a right of access to information pertaining solely to the individual that would otherwise be confidential under common-law privacy. Section 552.023(a) states "a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023; *see* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, if the requestor is acting as the individual's authorized representative, then the sheriff's office may not withhold the marked information from this requestor under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as the individual's authorized representative, then the sheriff's office must withhold the information we have 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 or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). We note section 552.130 protects privacy interests. As noted above, the requestor represents the insurance provider of the individual whose information is at issue and may have a right of access to this information. *See id.* § 552.023; ORD 481. Thus, if the requestor is acting as the authorized representative of the individual at issue, then she has a right of access to the marked motor vehicle record information pertaining to that individual pursuant to section 552.023, and this information may not be withheld from her under section 552.130. If the requestor is not acting as the individual's authorized representative, then the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

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

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<sup>1</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).

address is of a type specifically excluded by subsection (c).<sup>2</sup> *See* Gov't Code § 552.137(a)-(c). Upon review, we find the e-mail address we have marked is generally confidential under section 552.137 of the Government Code. As noted, however, the requestor represents the insurance provider of the individual whose e-mail address is at issue, and may be acting as his authorized representative. Therefore, the requestor may have a right of access to the e-mail address we have marked pursuant to section 552.137(b) of the Government Code. *See id.* § 552.137(b). Accordingly, if the requestor is acting as the individual's authorized representative, then she has a right of access to his e-mail address, and that information may not be withheld from this requestor under section 552.137 of the Government Code. If the requestor is not the individual's authorized representative, then the sheriff's office must withhold the e-mail address we have marked under section 552.137 of the Government Code.

In summary, if the requestor is not acting as the individual's authorized representative, then the sheriff's office must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as the individual's authorized representative, then the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. If the requestor is not acting as the individual's authorized representative, then the sheriff's office must withhold the e-mail address we have marked under section 552.137 of the Government Code. The sheriff's office must release the remaining information.<sup>3</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.

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/>

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<sup>2</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. Open Records Decision No. 481, 480 (1987), 470 (1987).

<sup>3</sup>We note the information being released contains social security numbers. 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 a decision from this office. *See* Gov't Code § 552.147(b). We note, however, the request may have has a right of access to the social security number at issue as the individual's authorized representative. *See generally id.* § 552.023(b) (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Therefore, if the requestor is acting as the individual's authorized representative, the individual's social security number may not be withheld under section 552.147. If the requestor is not the individual's authorized representative, then the social security number may be withheld under section 552.147.

[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 Keeney  
Assistant Attorney General  
Open Records Division

JDK/dls

Ref: ID# 608339

Enc. Submitted documents

c: Requestor  
(w/o enclosures)