



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 12, 2016

Mr. Andrew E. Holway
Assistant Criminal District Attorney
Civil Section
County of Bexar
101 West Nueva Street, 7th Floor
San Antonio, Texas 78205

OR2016-15746

Dear Mr. Holway:

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# 618028 (BCDA File No. 5158).

The Bexar County Bail Bond Board (the "board") received a request for (1) a specified renewal application for Gabriel Bail Bonds ("Gabriel") and the previous two renewal applications submitted during a specified time period, (2) all e-mails between named individuals and Gabriel during a specified time period, and (3) all bail bonds executed by Gabriel during a specified time period. You claim some of the submitted information is not subject to the Act. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, 552.136, and 552.147 of the Government Code. You also state release of the submitted information may implicate the interests of Gabriel. Accordingly, you notified Gabriel of the request for information and of its right to submit arguments stating why its information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted information responsive to the portion of the request that seeks all e-mails between named individuals and Gabriel during a specified time period. Further, you do not inform us you have released this information. Although you state you have submitted a representative sample of the requested information, we find the submitted information is not representative of all the types of information to which the requestor seeks access. Please be advised, this open records letter ruling applies only to the types of information you have submitted for our review. This ruling does not authorize the board to withhold any information that is substantially different from the types of information you submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). Accordingly, to the extent any information responsive to the portion of the request that seeks all e-mails between named individuals and Gabriel during a specified time period existed on the date the board received the request, we assume the board has released it. If the board has not released any such information, it must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, you assert some of the submitted information is not subject to the Act because it consists of records of the judiciary. The Act is applicable to information “written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body.” Gov't Code § 552.002(a)(1). However, the Act's definition of “governmental body” does not include the judiciary. *Id.* § 552.003(1)(B). Information “written, produced, collected, assembled, or maintained by or for the judiciary” is not subject to the Act but, instead, is “governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.” *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under Government Code section 552.003(1)(B) prior to enactment of Government Code section 552.0035). Therefore, the Act neither authorizes information held by the judiciary to be withheld, nor does it require such information be disclosed. *See* Open Records Decision No. 25 (1974). You contend some of the submitted information consists of an executed bail bond maintained by the Bexar County District Clerk's Office on behalf of the judiciary. However, the information at issue indicates it was written, produced, collected, or assembled by the board in connection with its official business and is maintained by the board for its own purposes. Consequently, we determine the board has failed to establish the information at issue was collected, assembled, or maintained by or for the judiciary. Accordingly, the information at issue is subject to the Act, and we will consider the board's arguments against its disclosure.

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not

received comments from Gabriel explaining why the submitted information should not be released. Therefore, we have no basis to conclude Gabriel has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the board may not withhold the submitted information on the basis of any proprietary interest Gabriel may have in the information.

We note the submitted information contains a court-filed document. Section 552.022(a)(17) of the Government Code provides for required public disclosure of “information that is also contained in a public court record,” unless the information is made confidential under the Act or other law. Gov’t Code § 552.022(a)(17). The board must release this information pursuant to section 552.022(a)(17), which we have indicated, unless it is made confidential under the Act or other law. You seek to withhold some of this information under section 552.101 of the Government Code in conjunction with common-law privacy. We note common-law privacy is not applicable to information contained in public court records. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, the information at issue may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, as sections 552.101 and 552.130 of the Government Code can make information confidential under the Act, we will consider the board’s remaining arguments under these sections for the information at issue. We will also consider the board’s arguments for the information not subject to section 552.022.

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 section 560.003 of the Government Code, which provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *See id.* § 560.003; *see also id.* §§ 560.001(1) (defining “biometric identifier” to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless individual consents to disclosure). Upon review, we find the fingerprints we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

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 no portion of the remaining information is subject to section 552.130 of the Government Code. Accordingly, the board may not withhold any portion of the remaining information under section 552.130 of the Government Code.

Section 552.101 of the Government Code also 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.¹ *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 board must withhold the public citizen's date of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], 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.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Upon review, the board must withhold the account numbers, routing numbers, and insurance policy numbers we have marked under section 552.136 of the Government Code.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. Gov’t Code § 552.147. Upon review, we find the board may withhold the social security number in the remaining information under section 552.147 of the Government Code.

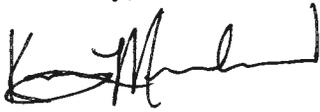
In summary, the board must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The board must withhold the public citizen's date of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The board must withhold the account numbers, routing numbers, and insurance policy numbers we have marked under section 552.136 of the Government Code. The board may withhold the social security number in the remaining information under section 552.147 of the Government Code. The board must release the remaining information.

¹Section 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).

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, 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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 618028

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)