



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 5, 2016

Ms. Leslie O. Haby
Assistant Criminal District Attorney
Bexar County Criminal District Attorney's Office
101 West Nueva Street, 7th Floor
San Antonio, Texas 78205

OR2016-17678

Dear Ms. Haby:

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# 621485.

The Bexar County Criminal District Attorney's Office (the "district attorney's office") received a request for court records related to a specified case involving a named individual. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The submitted information includes court-filed documents subject to section 552.022(a)(17), which must be released unless they are made confidential under the Act or other law. *See id.* You seek to withhold the information subject to section 552.022(a)(17) under sections 552.103 and 552.108 of the Government Code. However, sections 552.103 and 552.108 are discretionary in nature and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the court-filed documents subject to section 552.022(a)(17), which we have marked, may not be withheld under section 552.103 or section 552.108 of the Government Code. However, as section 552.101 of the Government Code makes information confidential under the Act, we will consider the applicability of section 552.101 to the submitted information.¹ Additionally, we will address your arguments under sections 552.103 and 552.108 for the remaining information not subject to section 552.022(a)(17).

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). A governmental body claiming section 552.108(a)(1) must 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 (Tex. 1977). You state the submitted information pertains to a pending criminal prosecution. However, the submitted documents reveal the specified case involving the named individual concluded in a final disposition in 2004. As such, we find you have failed to demonstrate release of the information at issue would interfere with the detection, investigation, or prosecution of crime. Therefore, we conclude the district attorney's office may not withhold any of the remaining information under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 62.0132 of the Government Code. This provision authorizes the Office of Court Administration of the Texas Judicial System to create a standardized juror questionnaire form to be used in courts throughout the state. *See id.* § 62.0132(a). Section 62.0132(f) states information contained in a completed questionnaire is confidential and not subject to the Act. We note the remaining information contains completed juror

¹The 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).*

questionnaires. Accordingly, the district attorney's office must withhold the completed juror questionnaires contained within the remaining information under section 552.101 in conjunction with section 62.0132(f) of the Government Code.

Information collected about jurors in the jury selection process is governed by article 35.29 of the Code of Criminal Procedure, which is also encompassed by section 552.101 of the Government Code. Article 35.29 provides:

Information collected by the court or by a prosecuting attorney during the jury selection process about a person who serves as a juror, including the juror's home address, home telephone number, social security number, driver's license number, and other personal information, is confidential and may not be disclosed by the court, the prosecuting attorney, the defense counsel, or any court personnel except on application by a party in the trial or on application by a bona fide member of the news media acting in such capacity to the court in which the person is serving or did serve as a juror. On a showing of good cause, the court shall permit disclosure of the information sought.

Crim. Proc. Code art. 35.29. Article 35.29 makes confidential certain personal information pertaining only to those individuals who actually served on the petit jury in a criminal trial. Juror names, however, are not made confidential by article 35.29, and are not "other personal information" that is confidential pursuant to article 35.29. It appears the information at issue includes individuals who did and did not serve on the jury. Thus, to the extent the addresses we have marked are the home addresses of individuals who actually served on the petit jury, the information we marked must be withheld under section 552.101 of the Government Code in conjunction with article 35.29 of the Code of Criminal Procedure.

Section 552.101 also encompasses information protected by other statutes, such as chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1 of the Government Code. *See Gov't Code* § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except

as provided by chapter 411. *See generally id.* §§ 411.090-127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F, of the Government Code. We note section 411.083 does not apply to active warrant information or other information relating to one's current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Further, CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find a portion of the remaining information, which we have marked, consists of CHRI that is confidential under section 411.083. Thus, the district attorney's office must withhold the information we marked under section 552.101 in conjunction with section 411.083 of the Government Code.

Section 552.101 also encompasses information made confidential by other statutes, such as chapter 611 of the Health and Safety Code. Section 611.002 pertains to mental health records and provides, in pertinent part,

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining "patient" and "professional"). Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See id.* §§ 611.004, .0045; *see also* Open Records Decision No. 565 (1990). Upon review, we find portions of the remaining information, which we have marked, consist of mental health records that are subject to chapter 611 of the Health and Safety Code. Accordingly, the district attorney's office must withhold the marked mental health records under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.

We note the remaining information contains public citizens' dates of birth. Section 552.101 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.² *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. Because "the right of privacy is purely personal," that right "terminates upon the death of the person whose privacy is invaded." *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.). We note the requestor has a right of access to his client's date of birth under section 552.023 of the Government Code and it may not be withheld from him under section 552.101 in conjunction with common-law privacy. See Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the district attorney's office must withhold all living public citizens' dates of birth that do not belong to the requestor's client under section 552.101 of the Government Code.

We note some of the remaining information is subject to section 552.130 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. Accordingly, the district attorney's office must withhold the types of motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, the district attorney's office must release the court-filed documents we marked under section 552.022(a)(17) of the Government Code. The district attorney's office must withhold (1) the completed juror questionnaires under section 552.101 of the Government Code in conjunction with section 62.0132(f) of the Government Code, (2) the information we marked under section 552.101 of the Government Code in conjunction with article 35.29 of the Code of Criminal Procedure, (3) the marked CHRI under section 552.101 in conjunction with section 411.083 of the Government Code, (4) the information we marked under section 552.101 in conjunction with section 611.002 of the Health and Safety Code, (5) all living public citizens' dates of birth that do not belong to the requestor's client under section 552.101 of the Government Code in conjunction with common-law privacy, and (6)

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).

the types of information we marked under section 552.130. The remaining information must be released.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.

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,



Ian Lancaster
Assistant Attorney General
Open Records Division

IML/akg

Ref: ID# 621485

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³The 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). Additionally, we note the requestor in this instance has a right of access beyond the general public to some of the released information.