



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

September 1, 2016

Ms. Diana Spiller  
Research Specialist/Public Information Coordinator  
Texas Commission on Jail Standards  
P.O. Box 12985  
Austin, Texas 78711

OR2016-19815

Dear Ms. Spiller:

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# 624905.

The Texas Commission on Jail Standards (the "commission") received a request for information regarding the custodial death of a specified inmate. You state the commission will release some information upon payment of costs. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.1175 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. We note 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. Civ. App.—Texarkana 1979, writ ref'd n.r.e.). Thus, the commission must withhold all living public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>2</sup>

The commission raises section 552.1175 of the Government Code for portions of the submitted information, which provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

(2) county jailers as defined by Section 1701.001, Occupations Code[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(2), (b). To the extent the individuals listed in Exhibit B are peace officers as defined by article 2.12 of Code of Criminal Procedure or county jailers as defined by section 1701.001 of the Occupations Code, section 552.1175 applies to those individuals. Accordingly, to the extent the information at issue, which we have marked, relates to individuals who are peace officers or county jailers and who elect to restrict access to their information in accordance with section 552.1175(b), the commission must withhold the

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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).

<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

marked information under section 552.1175 of the Government Code. Conversely, if the individuals whose information is at issue are not peace officers or county jailers or do not elect to restrict access to their information in accordance with section 552.1175(b), the marked information may not be withheld under section 552.1175.

In summary, the commission must withhold all living public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the individuals listed in Exhibit B are peace officers or county jailers and elect to restrict access to their information in accordance with section 552.1175(b), the commission must withhold the information we marked under section 552.1175 of the Government Code. The remaining information must be released.<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/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,



Ian Lancaster  
Assistant Attorney General  
Open Records Division

IML/akg

Ref: ID# 624905

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>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).