



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 7, 2016

Mr. Carlos G. Madrid
Assistant County Attorney
El Paso County Attorney's Office
500 East San Antonio Avenue, Room 503
El Paso, Texas 79901

OR2016-20128

Dear Mr. Madrid:

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# 625320 (County File No. 0221-16-PI).

The El Paso County Sheriff's Office (the "sheriff's office") received a request for ten categories of information related to a specified motor vehicle accident. You state you will release some information to the requestor. 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 "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses 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.¹ Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (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

¹Although you raise section 552.101 in conjunction with sections 411.084 and 411.085 of the Government Code, we understand you to raise section 552.101 in conjunction with section 411.083 of the Government Code.

provided in chapter 411, subchapter F or subchapter E-1 of the Government Code. *See* Gov't Code § 411.083. 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 or subchapter E-1 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). We also note the term CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find you have not demonstrated any portion of the submitted information consists of CHRI for purposes of chapter 411 of the Government Code, and the sheriff's office may not withhold it under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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 generally highly intimate or embarrassing. *See* Open Records Decision Nos. 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). 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. *Indus. Found.*, 540 S.W.2d 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 *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the

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).

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. However, the right to privacy is a personal right that lapses at death and the common-law right to privacy does not encompass information that relates only to a deceased individual. *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.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded” (quoting RESTATEMENT (SECOND) OF TORTS § 652I (1977))); Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 (1981) (“the right of privacy is personal and lapses upon death”). Accordingly, information pertaining to a deceased individual may not be withheld on common-law privacy grounds.

Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must generally withhold the information we have marked, along with all living public citizens' dates of birth, under section 552.101 of the Government Code in conjunction with common-law privacy. We note the requestor may be the authorized representative of one of the individuals whose privacy interests are at issue; thus, the requestor may have a right of access to this individual's private information pursuant to section 552.023 of the Government Code. *See Gov't Code § 552.023(b)* (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Because we are unable to determine whether the requestor is the authorized representative of one of the individuals whose privacy interests are at issue, we must rule conditionally. If the requestor is acting as the authorized representative of the individual at issue, then the sheriff's office may not withhold the information we have marked or the date of birth relating to this individual under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of the individual at issue, then the sheriff's office must withhold the information we have marked and the date of birth relating to this individual under section 552.101 in conjunction with common-law privacy. In either instance, the sheriff's office must withhold the remaining information we have marked, along with the remaining living public citizens' dates of birth, under section 552.101 in conjunction with common-law privacy.³

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

³As our ruling is dispositive for this information we need not address your remaining argument against its disclosure.

excepted from public release. *See* Gov't Code § 552.130. Because the right of privacy lapses at death, motor vehicle record information that pertains solely to deceased individuals may not be withheld under section 552.130. *See Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229, H-917; ORD 272. Upon review, we find the remaining information contains motor vehicle record information subject to section 552.130. However, we note section 552.130 is designed to protect the privacy of individuals and the requestor may be acting as the authorized representative of the owner of one of the vehicles at issue. Accordingly, the requestor may have a right of access to this individual's motor vehicle record information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(b); ORD 481 at 4. Thus, we must rule conditionally. If the requestor is acting as the authorized representative of the owner of one of the vehicles at issue, the sheriff's office may not withhold the motor vehicle record information pertaining to this individual, which we have marked, under section 552.130 of the Government Code and must release this information to the requestor. If, however, the requestor is not acting as the authorized representative of the owner of one of the vehicles at issue, the sheriff's office must withhold the motor vehicle record information pertaining to this individual, which we have marked, under section 552.130 of the Government Code. In either instance, the sheriff's office must withhold the remaining motor vehicle record information we have marked under section 552.130 of the Government Code. However, we find none of the remaining information is subject to section 552.130 of the Government Code and, thus, none of it may be withheld on that basis.

Section 552.136 of the Government Code provides. "Notwithstanding 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."⁴ 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). As noted above, the requestor may be acting as the authorized representative of one of the individuals whose information is at issue. Accordingly, because the purpose of section 552.136 is to protect the privacy interests of individuals, the requestor may have a right of access to this individual's information under section 552.023 of the Government Code. *See id.* § 552.023(b); ORD 481 at 4. Thus, we must rule conditionally. If the requestor is acting as the authorized representative of the individual at issue, the sheriff's office may not withhold the insurance policy number pertaining to this individual, which we have marked, under section 552.136 of the Government Code and must release this information to the requestor. If, however, the requestor is not acting as the authorized representative of the individual at issue, the sheriff's office must withhold the insurance policy number pertaining to this individual, which we have marked, under section 552.136 of the Government Code. In either instance, the sheriff's office must withhold the remaining insurance policy numbers we have marked under section 552.136 of the Government Code.

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, if the requestor is not acting as the authorized representative of the individual to whom the information relates, then the sheriff's office must withhold: (1) the information we have marked and the date of birth relating to this individual under section 552.101 in conjunction with common-law privacy; (2) the motor vehicle record information pertaining to this individual, which we have marked, under section 552.130 of the Government Code; and (3) the insurance policy number pertaining to this individual, which we have marked, under section 552.136 of the Government Code. With regard to the remaining individuals in the submitted information, the sheriff's office must withhold: (1) the information we have marked and the dates of birth relating to these individuals still living under section 552.101 in conjunction with common-law privacy; (2) the motor vehicle record information pertaining to these individuals still living, which we have marked, under section 552.130 of the Government Code; and (3) the insurance policy numbers pertaining to these individuals, which we have marked, under section 552.136 of the Government Code. The sheriff's office must release the remaining information.

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 625320

Enc. Submitted documents

c: Requestor
(w/o enclosures)