



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 16, 2015

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

OR2015-21769

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# 584198.

The Texas Commission on Jail Standards (the "commission") received a request for documents related to a specified complaint investigation.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code.<sup>2</sup> 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 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

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<sup>1</sup>As you have not submitted a copy of the request for information, we take our description from your brief.

<sup>2</sup>Although you do not raise section 552.137 of the Government Code in your brief, we understand you to raise this exception based on your markings. Further, we note the commission did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(e). Nonetheless, because the exceptions you claim can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

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).

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.* 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>3</sup> *Texas 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.

Upon review, we find most of the information you have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We also find the additional information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we find you have not demonstrated some of the information you marked is highly intimate or embarrassing and not of legitimate public concern. This information, which we marked for release, may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Therefore, except for the information we marked for release, the commission must generally withhold the information you marked and the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. Further, the commission must generally withhold the public citizen's date of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

However, we note the requestor may be acting as the authorized representative of the individual whose privacy interest is at issue. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). If the requestor is acting as the individual's authorized representative, then the requestor has a right of access to information pertaining to the individual that would otherwise be confidential under common-law privacy. Accordingly,

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<sup>3</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).

if the requestor is acting as the individual's authorized representative, then the commission may not withhold any portion of the marked information under section 552.101 on the basis of common-law privacy.

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 address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). You seek to withhold the e-mail address you have marked under section 552.137 of the Government Code. However, we note the requestor has a right to her own e-mail address under section 552.137(b) of the Government Code. *Id.* § 552.137(b). Therefore, the commission may not withhold the personal e-mail address you have marked under section 552.137 of the Government Code.

In summary, except for the information we marked for release, the commission must generally withhold the information you marked and the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. Further, the commission must generally withhold the public citizen's date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is acting as the authorized representative of the individual whose information is at issue, then the commission may not withhold any portion of the marked information under section 552.101 on the basis of common-law privacy. The commission must release the remaining information to this requestor.

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 584198

Enc. Submitted documents

c: Requestor  
(w/o enclosures)