



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 14, 2016

Mr. Dylan Farmer  
Counsel for Alvin Independent School District  
Rogers, Morris & Grover, L.L.P.  
5718 Westheimer Road, Suite 1200  
Houston, Texas 77057

OR2016-05791

Dear Mr. Farmer:

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# 607964.

The Alvin Independent School District Police Department (the "department"), which you represent, received a request for information pertaining to a specified investigation. You state the department released some information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information you marked pertains to a criminal investigation that concluded in a result other than conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the information at issue. Accordingly, the department may withhold the information you marked under section 552.108(a)(2) of the Government Code.<sup>1</sup>

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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 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>2</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. We note common-law privacy protects personal privacy. Thus, the requestor has a right of access to her client’s information under section 552.023 of the Government Code and this information may not be withheld from her under section 552.101 of the Government Code in conjunction with common-law privacy. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at (4) (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, with the exception of the date of birth belonging to the requestor’s client, the department must withhold all public citizens’ dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

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. We note the requestor has a right of access to her client’s motor vehicle record information pursuant to section 552.023 of the Government Code this information may not be withheld from her under section 552.130 of the Government Code. *See id.* § 552.023(b); ORD 481 at 4. Accordingly, with the exception of the motor vehicle record information belonging to the requestor’s client, the department must withhold the motor vehicle record information it marked under section 552.130 of the Government Code.

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* Gov’t Code

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<sup>2</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).

§ 552.137(a)-(c). We note the requestor has a right of access to her own e-mail address and her client's e-mail address pursuant to section 552.137(b) of the Government Code. *See id.* § 552.137(b). Therefore, the department may not withhold the requestor's e-mail address or her client's e-mail address under section 552.137. However, the remaining e-mail addresses at issue are not of a type excluded by subsection (c). Therefore, the department must withhold the remaining e-mail addresses you marked under section 552.137 of the Government Code, unless the owners affirmatively consent to public disclosure.

In summary, the department may withhold the information it marked under section 552.108(a)(2) of the Government Code. With the exception of the date of birth belonging to the requestor's client, the department must withhold all public citizens' dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the motor vehicle record information belonging to the requestor's client, the department must withhold the motor vehicle record information it marked under section 552.130 of the Government Code. With the exception of the requestor's e-mail address and her client's e-mail address, the department must withhold the e-mail addresses it marked under section 552.137 of the Government Code, unless the owners affirmatively consent to public disclosure. The department 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](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,



Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/dls

Ref: ID# 607964

Enc. Submitted documents

c: Requestor  
(w/o enclosures)