May 4, 2016

Ms. Ana Vieira Ayala  
Senior Attorney & Public Information Coordinator  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2901

OR2016-10077

Dear Ms. Ayala:

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# 608881 (OCG# 167831).

The University of Texas Medical Branch at Galveston (the “university”) received a request for information pertaining to a specified report. You state you have released some information to the requestor. You state you will redact information pursuant to section 552.130(c) of the Government Code.¹ You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted 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

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. See Gov’t Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See id. § 552.130(d), (e).
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
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 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. Thus, with the exception of the requestor’s client’s date of birth, to
which the requestor has a right of access pursuant to section 552.023 of the Government
Code, the university must withhold the public citizens’ dates of birth you have marked under
section 552.101 of the Government Code in conjunction with common-law privacy. 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). As you raise no other
exceptions against disclosure, the university must release the remaining information.

Finally, you ask this office to issue a previous determination permitting the university to
withhold public citizens’ dates of birth under section 552.101 of the Government Code in
conjunction with common-law privacy. See Gov’t Code § 552.301(a) (allowing
governmental body to withhold information subject to previous determination); Open
Records Decision No. 673 (2001). After due consideration, we have decided to grant your
request on this matter. Therefore, this letter ruling authorizes the university to withhold the
dates of birth of public citizens under section 552.101 of the Government Code in
conjunction with common-law privacy. We note common-law privacy is a personal right
that lapses at an individual’s death. See Moore v. Charles B. Pierce Film Enters., Inc., 589
S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref’d n.r.e.); see also Open Records
Decision Nos. 620 (1993), 272 (1981), 192 (1978). Therefore, this previous determination
authorizes the university to withhold dates of birth of living individuals. This previous
determination is not applicable to dates of birth belonging to deceased individuals. We also
note a person or a person’s authorized representative has a special right of access under
section 552.023 of the Government Code to information that is protected from public
disclosure by laws intended to protect the person’s privacy interests. See Gov’t Code
§ 552.023(a); ORD 481 at 4. Therefore, this previous determination is not applicable to
dates of birth requested by a person or the authorized representative of a person whose date
of birth is at issue. Furthermore, information filed with a court is not protected by

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).
common-law privacy. See Gov’t Code § 552.022(a)(17); Star-Telegram v. Walker, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Accordingly, this previous determination is not applicable to dates of birth contained in court-filed documents. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the university need not ask for a decision from this office again with respect to this type of information. See ORD 673 at 7-8 (listing elements of second type of previous determination under Gov’t Code § 552.301(a)).

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,

Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 608881

Enc. Submitted documents

c: Requestor (w/o enclosures)