



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 9, 2016

Mr. Vance Hinds
Assistant County and District Attorney
Ellis County
109 South Jackson
Waxahachie, Texas 75165

OR2016-24999

Dear Mr. Hinds:

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# 636999.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for a specified report. The sheriff's office claims some of the submitted information is excepted from disclosure under sections 552.101, 552.130, 552.136, and 552.147 of the Government Code. We have considered the claimed exceptions 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. This section encompasses section 411.192 of the Government Code, which provides, in relevant part, as follows:

(a) [The Department of Public Safety ("DPS")] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to

disclosure under this section includes the individual's name, date of birth, gender, race, zip code, telephone number, e-mail address, and Internet website address. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the [Act].

(b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

Id. § 411.192(a)-(b). The information at issue contains concealed handgun license information that the sheriff's office appears to have obtained from DPS. Therefore, the sheriff's office must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 411.192(a) of the Government Code.¹

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. This office has found the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information, *see* Open Records Decision No. 455 (1987); and personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990). In addition, 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 *Tex. Comptroller*, 354

¹As our ruling is dispositive, we do not address the other arguments of the sheriff's office to withhold this information.

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).

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 agree the sheriff's office must withhold the remaining information it has marked 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. With the exception of the information we have marked for release, the sheriff's office must withhold the remaining motor vehicle record information it has marked under section 552.130 of the Government Code. However, the remaining information is not confidential under section 552.130, and the sheriff's office may not withhold it on that ground.

Section 552.136(b) of the Government Code provides, "[n]otwithstanding any other provision of this chapter, 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." *Id.* § 552.136(b). This office has determined an insurance policy number is an access device number for purposes of section 552.136. Open Records Decision No. 684 at 9 (2009). We agree the sheriff's office must withhold the information it has marked under section 552.136 of the Government Code.

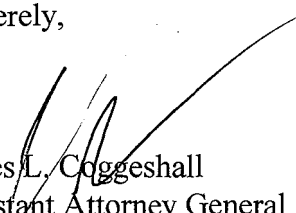
To conclude, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.192(a) of the Government Code. With the exception of the information we have marked for release, the sheriff's office must withhold the remaining information it has marked under section 552.101 of the Government Code in conjunction with common-law privacy and under sections 552.130 and 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 636999

Enc. Submitted documents

c: Requestor
(w/o enclosures)