December 27, 2016

Ms. Shannon C. Francis
Assistant County Attorney
Williamson County Attorney
405 Martin Luther King Street, Box 7
Georgetown, Texas 78626

OR2016-28413

Dear Ms. Francis:

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# 639263.

The Williamson County Attorney’s Office (the “county attorney’s office”) received a request for all documents pertaining to an incident involving the requestor’s client. You state the county attorney’s office will redact information pursuant to sections 552.130(c) of the Government Code and pursuant to section 552.137 of the Government Code in accordance with Open Records Decision No. 684 (2009). You state the county attorney’s office will release some information to the requestor. 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 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101.

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). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. See ORD 684.
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. See *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, the county attorney’s office must withhold all public citizens’ dates of birth it marked under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no other exceptions to disclosure, the county attorney’s office must release the remaining information.

Additionally, you ask this office to issue a previous determination permitting the county attorney’s office 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 county attorney’s office 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. Civ. 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 county attorney’s office 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 No. 481 at 4 (privacy theories not implicated when individual requests information concerning himself). Therefore, this previous determination

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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).

3We note the requestor has a right of access to some of the information being requested in this instance. See Gov’t Code 552.023(a), Open Records Decision No. 481 at 4 (1987).
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 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 county attorney’s 
office 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/
ord_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,

Kaelan A. Henze
Assistant Attorney General
Open Records Division

KAH/eb

Ref: ID# 639263

Enc. Submitted documents

c: Requestor
(w/o enclosures)