



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 11, 2017

Mr. Tillman S. Roots
Assistant District Attorney
County of Comal
150 North Seguin Avenue, Suite 307
New Braunfels, Texas 78130-5161

OR2017-00787

Dear Mr. Roots:

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# 641114 (File No. 16OR-110).

The Comal County Sheriff's Office (the "sheriff's office") received a request for police reports pertaining to a specific address during a specific date range, including a specified report. The sheriff's office states it will redact motor vehicle record information under section 552.130(c) of the Government Code and social security numbers under section 552.147(b) of the Government Code.¹ The sheriff's office claims the submitted information is excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception the sheriff's office claims and reviewed the submitted information.

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 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). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *Id.* § 552.147(b).

²We note the sheriff's office did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(e). Nonetheless, because section 552.101 of the Government Code can make information confidential, and thus, provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352. Although the sheriff's office also raises all other exceptions to disclosure within sections 552.101 through 552.148 of the Government Code, the sheriff's office has provided no arguments explaining how these exceptions are applicable to the submitted information. Therefore, we assume the sheriff's office no longer asserts these exceptions. *See* Gov't Code §§ 552.301(e)(1)(A), .302.

Initially, we note the sheriff's office has only submitted one report. Thus, to the extent any additional responsive information existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 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. 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.³ *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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

The sheriff's office argues the submitted information must be withheld in its entirety on the basis of common-law privacy. However, the sheriff's office has not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the submitted information must be withheld on the basis of common-law privacy. Thus, the sheriff's office may not withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, upon review, we find the information we have marked satisfies the standard articulated in *Industrial Foundation*. Thus, the sheriff's office must withhold the information we have marked under section 552.101 of the

³Section 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).

Government Code in conjunction with common-law privacy. However, none of the remaining information is highly intimate or embarrassing and of no legitimate public interest and thus, none of it may be withheld under section 552.101 of the Government Code on that basis. 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 641114

Enc. Submitted documents

c: Requestor
(w/o enclosures)