



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

March 24, 2017

Ms. Lindsey Aston  
General Counsel  
Office of the Secretary of State  
P.O. Box 12697  
Austin, Texas 78711-2060

OR2017-06115

Dear Ms. Aston:

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# 648543.

The Office of the Secretary of State (the "secretary's office") received five requests from different requestors for Reasonable Impediment Declarations related to a specified election.<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.115, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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. You raise the National Voter Registration Act (the "NVRA"), 52 U.S.C.

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<sup>1</sup>You state the secretary's office sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

§§ 20501-20511. Section 20507 of title 52 of the United States Code identifies requirements with respect to the administration of voter registration. *See* 52 U.S.C. § 20507. This section provides each state, in the administration of voter registration for elections for federal office, shall “ensure that the identity of the voter registration agency through which any particular voter is registered is not disclosed to the public.” *Id.* § 20507(a)(6); *see also id.* § 20506 (discussing designation of voter registration agencies under the NVRA). Your state portions of the submitted documents contain information pertaining to the voter registration agencies through which the individuals at issue registered to vote. We note the information at issue is general, and only provides that the voters registered at specified agencies, it does not identify the specific offices at which the voters registered.

We note the term “identity” for purposes of section 20507(a)(6) is not defined in the NVRA. Therefore, the Code Construction Act requires us to construe this term “according to the rules of grammar and common usage.” Gov’t Code § 311.011(a); *see* Attorney General Opinion JC-0419 at 3 (2001). Statutory construction should focus initially “‘on the literal text of the statute in question’ because ‘the text of the statute is the law.’” *Getts v. State*, 155 S.W.3d 153, 155 (Tex. Crim. App. 2005); *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991); Attorney General Opinion GA-0354 at 2 (2005). The Merriam-Webster Dictionary includes a definition of “identity” as “who someone is: the name of a person.” Merriam-Webster Dictionary Online, [www.merriam-webster.com/dictionary/identity](http://www.merriam-webster.com/dictionary/identity) (last visited September 23, 2016) (providing “simple definition” of “identity”). *See also* 26 U.S.C. § 6103(b)(6) (providing the term “taxpayer identity” means the name of a person with respect to whom a tax return is filed, his mailing address, his taxpayer identifying number, or a combination thereof); Open Records Decision No. 540 at 4 (1990) (finding “[a] name is by common usage often commonly considered the substantial equivalent of identity”). Accordingly, upon review of the submitted information and your representations, because the information you have indicated identifies the agencies in which the individuals at issue registered to vote, we find this information contains the identity of the voter registration agencies at issue for purposes of section 20507(a)(6). Thus, the secretary’s office must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 20507(a)(6) of title 52 of the United States Code.

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 also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992) (personal financial information includes choice of particular insurance carrier), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental

body protected under common-law privacy). 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>3</sup> *Tex. 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. Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the secretary's office must withhold the public citizens' dates of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>4</sup> However, you have failed to demonstrate the remaining information you have marked is highly intimate or embarrassing and of no legitimate public interest. Thus, the secretary's office may not withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.115 of the Government Code excepts from disclosure “[a] birth or death record maintained by the bureau of vital statistics unit of the Department of State Health Services or a local registration official[.]” Gov't Code § 552.115(a). Section 552.115 is applicable only to information maintained by the bureau of vital statistics unit or local registration official. *See* Open Records Decision No. 338 (1982). Therefore, because it is maintained by the secretary's office, the information you have marked may not be withheld under section 552.115 of the Government Code.

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. Upon review, we find the secretary's office must withhold the information we have marked under section 552.130 of the Government Code.<sup>5</sup> However, the remaining information you have marked does not contain motor vehicle record information or a personal identification document issued by a Texas agency or another state or country or a local agency authorized to issue an identification document. Therefore, the secretary's office may not withhold the remaining information under section 552.130.

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<sup>3</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).

<sup>4</sup>As our ruling is dispositive, we do not address your remaining argument to withhold this information.

<sup>5</sup>As our ruling is dispositive, we do not address your remaining argument to withhold this information.

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). Upon review, we find the secretary’s office must withhold the information we have marked under section 552.136 of the Government Code. However, the remaining information you have marked is not confidential under section 552.136, and the secretary’s office may not withhold it on that ground.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. Gov’t Code § 552.147. Upon review, we find none of the remaining information consists of a social security number, and the secretary’s office may not withhold it under section 552.147 of the Government Code.

In summary, the secretary’s office must withhold: (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 20507(a)(6) of title 52 of the United States Code; (2) the public citizens’ dates of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the information we have marked under section 552.130 of the Government Code; and (4) the information we have marked under section 552.136 of the Government Code. The secretary’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](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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/sdk

Ref: ID# 648543

Enc. Submitted documents

c: Requestors  
(w/o enclosures)