



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 7, 2017

Ms. Melisa E. Meyler
Counsel for Blinn College
Thompson & Horton LLP
3200 Southwest Freeway, Suite 2000
Houston, Texas 77027-7554

OR2017-07415

Dear Ms. Meyler:

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# 652395.

Blinn College ("Blinn"), which you represent, received a request for all documents and recordings pertaining to two specified grievances, a specified police report, and all documents and recordings pertaining to a specified police interview. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we note the submitted information is subject to section 552.022(a)(1). Section 552.022(a) provides, in relevant part:

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information pertains to two completed investigations that are subject to section 552.022(a)(1). Blinn must release this information pursuant to section 552.022(a)(1) unless it is made confidential under the Act or other law. You seek to withhold the information subject to section 552.022(a)(1) under section 552.103 of the Government Code. However, section 552.103 is discretionary in nature and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the submitted information may not be withheld under section 552.103 of the Government Code. However, the submitted information contains information subject to sections 552.101 and 552.130 of the Government Code.² Because sections 552.101 and 552.130 make information confidential under the Act, we will address the applicability of these sections to 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. 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. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *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.). However, we note the information at issue includes the requestor's date of birth. The requestor has a right of access to her own date of birth pursuant to section 552.023 of the Government Code and it may not be withheld from her. *See id.* § 552.023(a) (person or 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 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, Blinn must withhold the marked dates of birth under section 552.101 of the Government Code.

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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(a). We note section 552.130 protects privacy interests. Accordingly, the requestor has a right of access to her own motor vehicle record information pursuant to section 552.023 of the Government Code and it may not be withheld from her. *See id.* § 552.023(a); ORD 481 at 4. However, Blinn must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, Blinn must withhold the marked dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. Blinn must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. Blinn must release the remaining information.³

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,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/nmd

³We note the requestor has a right of access to some of the information being released. Gov't Code § 552.023(a) (a governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, Blinn must again seek a decision from this office if it receives another request for the same information from another requestor.

Ref: ID# 652395

Enc. Submitted documents

c: Requestor
(w/o enclosures)