



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 10, 2017

Ms. Mary I. Castillo  
Public Information Coordinator  
Texas Department of State Health Services  
P.O. Box 149347  
Austin, Texas 78714-9347

OR2017-15223

Dear Ms. Castillo:

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# 667737 (DSHS File No. 27145).

The Texas Department of State Health Services ("DSHS") received a request for the applications for a new license pertaining to two specified entities. You state you will release some information to the requestor. We understand you will redact information under section 552.147(b) of the Government Code.<sup>1</sup> You claim some of the submitted information is exempted from disclosure under sections 552.101, 552.130, and 552.137 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>We note 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. *See* Gov't Code § 552.147(b).

<sup>2</sup>Although you do not raise sections 552.130 and 552.137 of the Government Code in your brief, we understand you to raise these exceptions based on your markings in the documents. We note DSHS did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nonetheless, because sections 552.101, 552.130, and 552.137 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 of the Government Code encompasses information protected by other statutes. As part of the Texas Homeland Security Act, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism. DSHS contends the information it marked is confidential under section 552.101 in conjunction with section 418.178 and section 418.181 of the Government Code. Section 418.178 provides as follows:

(a) In this section, “explosive weapon” has the meaning assigned by Section 46.01, Penal Code.

(b) Information is confidential if it is information collected, assembled, or maintained by or for a governmental entity and:

(1) is more than likely to assist in the construction or assembly of an explosive weapon or a chemical, biological, radiological, or nuclear weapon of mass destruction; or

(2) indicates the specific location of:

(A) a chemical, biological agent, toxin, or radioactive material that is more than likely to be used in the construction or assembly of such a weapon; or

(B) unpublished information relating to a potential vaccine or to a device that detects biological agents or toxins.

*Id.* § 418.178. Section 418.181 provides,

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

*Id.* § 418.181. The fact that information may generally relate to biological toxins or security concerns does not make the information per se confidential under section 418.178 or section 418.181. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). As with any confidentiality statute, a governmental body asserting section 418.178 or section 418.181 must adequately explain how the responsive records fall within the scope of the provision at issue. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

DSHS states the information it marked reveals the specific location of radioactive material, as well as “specific types and amounts of radioactive materials; diagrams or photographs of facilities and storage containers where radioactive materials are stored; . . . words that would identify radioactive materials; and operating, safety, and emergency procedures for handling radioactive materials.” Upon review, we find the information DSHS marked is confidential under section 418.178 of the Government Code. Therefore, DSHS must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 418.178 of the Government Code.<sup>3</sup>

Section 552.101 of the Government Code also 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.). Thus, DSHS must withhold all public citizens’ dates of birth under section 552.101 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 a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov’t Code § 552.130. We note some of the information you marked on this basis does not consist of motor vehicle record information for purposes of section 552.130 of the Government Code. Therefore, DSHS may not withhold such information, which we marked for release, under section 552.130. Accordingly, with the exception of the information we marked for release, DSHS must withhold the information you marked for redaction and the information we marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. The e-mail addresses you marked are of the types specifically excluded by section 552.137(c). *See id.* § 552.137(c).

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Accordingly, DSHS may not withhold the e-mail addresses you marked under section 552.137 of the Government Code.

In summary, DSHS must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 418.178 of the Government Code. With the exception of the information we marked for release, DSHS must withhold the information it marked and the information we marked under section 552.130 of the Government Code. DSHS 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,



Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/bw

Ref: ID# 667737

Enc. Submitted documents

c: Requestor  
(w/o enclosures)