



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 3, 2017

Mr. Bob D. Odom  
Assistant District Attorney  
27th Judicial District of Texas  
P.O. Box 540  
Belton, Texas 76513-0540

OR2017-17516

Dear Mr. Odom:

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# 669448.

The 27th Judicial District Attorney's Office (the "district attorney's office") received a request for information pertaining to two cases. You state some information will be released. You state the district attorney's office will redact information subject to section 552.147(b) of the Government Code.<sup>1</sup> Further, you state the district attorney's office does not have a portion of the requested information.<sup>2</sup> You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>3</sup>

---

<sup>1</sup>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 an attorney general decision under the Act. *See* Gov't Code § 552.147(b).

<sup>2</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>3</sup>We note the district attorney's office did not comply with the requirements of section 552.301(e) of the Government Code in providing some of the information at issue. *See* Gov't Code § 552.301(e). Nonetheless, because sections 552.101 and 552.130 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 disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code. § 552.101. This section encompasses article 42A.256 of the Code of Criminal Procedure. Article 42A.256 is applicable to presentence investigation and postsentence reports and provides, in part:

(a) The judge by order may direct that any information and records that are not privileged and that are relevant to a presentence or postsentence report be released to a supervision officer conducting a presentence investigation under [subchapter F of Chapter 42A of the Code of Criminal Procedure] or preparing a postsentence report under Article 42A.259. The judge may also issue a subpoena to obtain that information.

(b) A presentence or postsentence report and all information obtained in connection with a presentence investigation or postsentence investigation report are confidential and may be released only as:

(1) provided by:

(A) Subsection (c);

(B) Article 42A.255;

(C) Article 42A.257;

(D) Article 42A.259; or

(E) Section 614.017, Health and Safety Code; or

(2) directed by the judge for the effective supervision of the defendant.

Crim. Proc. Code art. 42A.256(a), (b). You assert the information you indicated consists of a presentence investigation report. Additionally, you assert none of the release provisions in article 42A.256 are applicable. Accordingly, we conclude the district attorney’s office must withhold Exhibit B under section 552.101 of the Government Code in conjunction with article 42A.256 of the Code of Criminal Procedure.<sup>4</sup>

---

<sup>4</sup>Although you raise section 552.101 of the Government Code in conjunction with section 9 of article 42.12 of the Code Criminal Procedure, we note the 84th Legislature repealed this statute effective January 1, 2017. See Act of June 17, 2015, 84th Leg., R.S., ch. 770, §§ 3.01, 4.02, 2015 Tex. Gen. Laws 2320, 2395.

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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.). We note the requestor has a right of access to her client's date of birth pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(b) (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). Upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district attorney's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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. We note section 552.130 protects privacy interests. Accordingly, the requestor has a right of access to her client's 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(b); ORD 481 at 4. In this instance, it is not clear if the information at issue belongs to the requestor's client. Therefore, we must rule conditionally. To the extent the information at issue belongs to the requestor's client, the district attorney's office must release the information to this requestor. However, to the extent the information at issue does not belong to the requestor's client, the district attorney's office must withhold the marked information under section 552.130. However, you have failed to demonstrate any of the remaining information at issue is subject to section 552.130. Thus, the district attorney's office may not withhold any of the remaining information at issue under section 552.130 of the Government Code.

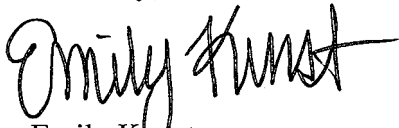
In summary, the district attorney's office must withhold Exhibit B under section 552.101 of the Government Code in conjunction with article 42A.256 of the Code of Criminal Procedure. The district attorney's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information at issue does not belong to the requestor's client, the district attorney's office must withhold the motor vehicle record information we marked under section 552.130

of the Government Code. The district attorney's office must release the remaining information.<sup>5</sup>

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,



Emily Kunst  
Attorney  
Open Records Division

EK/eb

Ref: ID# 669448

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>5</sup>We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(b); ORD 481 at 4. Thus, the district attorney's office must again seek a decision from this office if it receives another request for the same information from another requestor.