



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 21, 2017

Mr. Michael Shaunessy  
Counsel for the Hutto Police Department  
McGinnis Lochridge  
600 Congress Avenue, Suite 2100  
Austin, Texas 78701

OR2017-19043

Dear Mr. Shaunessy:

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# 678414.

The Hutto Police Department (the "department"), which you represent, received a request for report number 17-0706-0006. The department claims some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.137 of the Government Code. We have considered the exceptions the department claims and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The department states the submitted information relates to a closed criminal investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the information the department marked.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license, title or registration, or personal identification document issued by a Texas agency, or an agency of another state or country. Gov't Code

§ 552.130(a)(1)-(2). You have marked the information subject to section 552.130. We note, however, the requestor represents the insurance provider for one of the individuals listed in the submitted information. As such, the requestor, if acting as the individual's authorized representative, has a right of access to the insured's motor vehicle record information. *See id.* § 552.023(a) (“[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). Therefore, to the extent the requestor is acting as the insured's authorized representative, the department must release to the requestor the information you have marked pertaining to the insured, but withhold the remaining information marked under section 552.130 of the Government Code. To the extent the requestor is not acting as the insured's authorized representative, the department must withhold all of the motor vehicle record information you have marked under section 552.130 of the Government Code.

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. 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 Third 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.). As previously noted, the requestor represents the insurance provider for one of the individuals listed in the submitted information. As such, the requestor, if acting as the individual's authorized representative, has a right of access to the insured's date of birth. *See id.* § 552.023(a). Therefore, to the extent the requestor is acting as the insured's authorized representative, the department must release to the requestor the date of birth you have marked pertaining to the insured, but withhold the remaining information marked under section 552.101 of the Government Code. To the extent the requestor is not acting as the insured's authorized representative, the department must withhold all public citizens' dates of birth you have marked under section 552.101 of the Government Code.

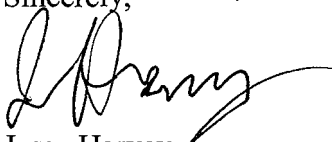
Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See Gov't Code* § 552.137(a)-(c). Upon review, we find the department must withhold the personal e-mail address you have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, the department may withhold the information it marked under section 552.108(a)(2) of the Government Code. To the extent the requestor is acting as the insured's authorized representative, the department must release to the requestor the information you have marked pertaining to the insured, but withhold the remaining information marked under section 552.101 of the Government Code in conjunction with common law privacy and the motor vehicle information you marked under section 552.130 of the Government Code. To the extent the requestor is not acting as the insured's authorized representative, the department must withhold all public citizens' dates of birth marked under section 552.101 of the Government Code in conjunction with common law privacy and all of the motor vehicle record information you have marked under section 552.130 of the Government Code. The department must withhold the personal e-mail address you have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The department must release the remaining information to this requestor.

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,



Jesse Harvey  
Assistant Attorney General  
Open Records Division

JH/bw

Ref: ID# 678414

Enc. Submitted documents

c: Requestor  
(w/o enclosures)