



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 24, 2017

Mr. Brody V. Burks  
Assistant Criminal District Attorney  
Appellate Division  
McLennan County  
219 North 6th Street, Suite 200  
Waco, Texas 76701

OR2017-19431

Dear Mr. Burks:

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# 678526.

The McLennan County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified incident. You claim the requested information is excepted from disclosure under sections 552.101, 552.130, 552.136, 552.137, and 552.147 of the Government Code Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

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, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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. Additionally, under the common-law right of privacy,

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<sup>1</sup>Although the district attorney's office does not raise sections 552.101, 552.136, and 552.137 in its briefing to this office, we understand it to raise this exception based on its arguments and markings.

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.). Therefore, we find the district attorney's office must withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy. However, the district attorney's office has failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate concern to the public. Therefore, the district attorney's office may not withhold any of the remaining information under section 552.101 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. Accordingly, the district attorney's office must withhold the motor vehicle record information you have marked and additional information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], 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.” Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the district attorney's office must withhold the information we have marked under section 552.136 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 id.* § 552.137(a)-(c). Upon review, we find you have failed to demonstrate any of the remaining information consists of “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” under section 552.137(c). The district attorney's office, therefore, may not withhold any of the remaining information under section 552.137(c) of the Government Code.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *Id.* § 552.147. Upon review, we find the district attorney's office may withhold the social security numbers it has marked under section 552.147 of the Government Code.

In summary, the district attorney's office must withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy.

The district attorney's office must withhold the motor vehicle record information you have marked as well as the information we marked under section 552.130 of the Government Code. The district attorney's office must withhold the information you have marked under section 552.136 of the Government Code. The district attorney's office may withhold the social security numbers it has marked under section 552.147 of the Government Code. The district attorney'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,



Jesse Harvey  
Assistant Attorney General  
Open Records Division

JH/bw

Ref: ID# 678526

Enc. Submitted documents

c: Requestor  
(w/o enclosures)