



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 2, 2017

Ms. Molly Cost
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2017-22435

Dear Ms. Cost:

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# 677842 (PIR#s 17-4732 & 17-6282).

The Texas Department of Public Safety (the "department") received two requests for a specified investigation file.¹ Although you take no position as to whether the submitted information is excepted under the Act, you state release of some of this information may implicate the interests of Waller County. Accordingly, you state, and provide documentation demonstrating, you notified Waller County of the requests for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See Gov't Code* § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released). We have reviewed the submitted information.

¹We note the department sought and received clarification of the information requested. *See Gov't Code* § 552.222(b) (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”² 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.). We note, however, that one of the dates of birth belongs to a deceased individual. Because privacy is a personal right that lapses at death, the common-law right to privacy does not encompass information that relates only to a deceased individual. Accordingly, the date of birth of the deceased individual may not be withheld on common-law privacy grounds. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); *see also* Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Thus, the department must withhold all living public citizens’ dates of birth, which we marked, 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 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 find portions of the submitted information consist of motor vehicle record information. Accordingly, the department must withhold the motor vehicle record information, which we marked, under section 552.130 of the Government Code.

In summary, the department must withhold the dates of birth of living public citizens, which we marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold motor vehicle record information, which we marked, under section 552.130 of the Government Code. The department must release the remaining information.

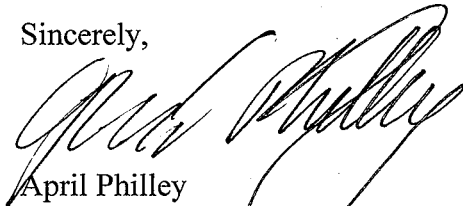
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/>

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).

[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,



April Philley
Assistant Attorney General
Open Records Division

AP/sb

Ref: ID# 677842

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

1 Third Party
(w/o enclosures)