



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 10, 2017

Mr. William T. Little
Assistant County & District Attorney
Ellis County & District Attorney's Office
109 South Jackson Street
Waxahachie, Texas 75165

OR2017-23100

Dear Mr. Little:

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# 679275.

The Ellis County Sheriff's Office (the "sheriff's office") received two requests from different requestors for specified incident reports. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the sheriff's office received the two requests for information in close temporal proximity and requested rulings from this office on the same day. We note you have marked portions of the information to be withheld from the first requestor under section 552.108 of the Government Code, but have not marked this same information to be withheld from the second requestor. In addition, we note you have marked portions of the information to be withheld from the second requestor under section 552.108 of the Government Code, but have not marked this same information to be withheld from the first requestor. Thus, we assume the sheriff's office will release the unmarked information to the respective requestors. We note the unmarked information to be released includes information beyond basic information. The Act does not permit the selective disclosure of information. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold that exact information from further disclosure unless its public release is

expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Although you raise section 552.108 with respect to the inconsistently marked information, this section is a discretionary exception and does not make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Thus, the sheriff's office may not withhold information from one requestor under section 552.108 that it has released to the other requestor. Accordingly, with respect to the information the sheriff's office releases to either requestor, the sheriff's office may not withhold such information from the other requestor under section 552.108 of the Government Code. However, we will consider your argument under section 552.108 with respect to the information you seek to withhold from both requestors. Further, as sections 552.101 and 552.130 of the Government Code make information confidential under law, we will consider the applicability of these exceptions to the remaining information.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than 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.*; *see also id.* § 552.301(e)(1)(A). You state the remaining information you have marked pertains to a concluded criminal case that did not result in conviction or deferred adjudication. Based on your representations and our review, we find section 552.108(a)(2) is applicable to this information. Therefore, the sheriff's office may withhold the remaining information you have marked under section 552.108(a)(2) 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." *Id.* § 552.101. This section 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.). However, we note each requestor has a right of access to their otherwise private information under section 552.023 of the Government Code and it may not be withheld from that requestor under section 552.101 of the Government Code in conjunction with common-law privacy. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Therefore, the sheriff's office must withhold the dates of birth you have 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. As noted above, each requestor has a right of access to information pertaining solely to themselves that would otherwise be confidential and it may not be withheld from that requestor on the basis of section 552.130 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Thus, the sheriff's office must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

In summary, with the exception of information the sheriff's office releases to either requestor, the sheriff's office may withhold the remaining information you have marked under section 552.108(a)(2) of the Government Code. The sheriff's office must withhold the dates of birth you have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the motor vehicle record information you have marked under section 552.130 of the Government Code. The sheriff's office must release the remaining information.¹

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, 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/tdw

¹We note, because the requestors have a right of access to some of the information being released, the sheriff's office must again seek a decision from this office if it receives another request for the same information from another requestor. *See* Gov't Code § 552.023(a); ORD 481 at 4.

Ref: ID# 679275

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)