



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 26, 2017

Mr. Matthew L. Grove  
Assistant County Attorney  
Fort Bend County  
401 Jackson Street, 3rd Floor  
Richmond, Texas 77469

OR2017-24441

Dear Mr. Grove:

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# 681881.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident. 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.

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 chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter E-1 or subchapter F of the Government Code. *See Gov't Code* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may

not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter E-1 or subchapter F of the Government Code. We note Federal Bureau of Investigation (“FBI”) numbers constitute CHRI generated by the FBI. Upon review, we find some of the submitted information, which we have marked, consists of CHRI that is confidential under section 411.083. Accordingly, the sheriff’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. However, none of the remaining information consists of CHRI for purposes of chapter 411, and may not be withheld on that basis.

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.). Because “the right of privacy is purely personal[.]” that right “terminates upon the death of the person whose privacy is invaded[.]” *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 Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded” (quoting RESTATEMENT (SECOND) OF TORTS § 6521)); Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 (1981) (“the right of privacy is personal and lapses upon death”). Therefore, any date of birth that pertains to a deceased individual may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff’s office must withhold the information we have marked and all living public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

However, we find the remaining information is not highly intimate or embarrassing information or is of legitimate public interest. Therefore, none of the remaining information may be withheld 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. However, because the right of privacy lapses at death, motor vehicle record information that pertains solely to deceased individuals may not be withheld under section 552.130. *See Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229, H-917; ORD 272. Therefore, motor vehicle record information that pertains solely to a deceased individual may not be withheld under section 552.130. Upon review, we find the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. We also find some of the remaining video recordings contain motor vehicle record information. You state the sheriff's office does not possess the technological capability to redact information from video files. Thus, the sheriff's office must withhold the video recordings we have indicated in their entirety under section 552.130 of the Government Code. *See* Open Records Decision No. 364 (1983). However, none of the remaining information is confidential under section 552.130 of the Government Code and thus, none of it may be withheld on that basis.

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).<sup>1</sup> *See* Gov't Code § 552.137(a)-(c). Upon review, we find the sheriff's office must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The sheriff's office must withhold the information we have marked and all living public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the motor vehicle record information we have marked and the video recordings we have indicated in their entirety under section 552.130 of the Government Code. The sheriff's office must withhold the personal e-mail address we have marked under section 552.137 of the Government Code,

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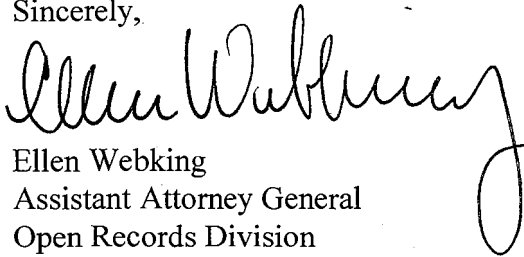
<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

unless the owner affirmatively consents to its public disclosure. The sheriff's office must release the remaining information.<sup>2</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,



Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/tdw

Ref: ID# 681881

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note the remaining information includes social security numbers. Section 552.147(b) of the Government Code authorizes a government body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).