



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 8, 2017

Ms. Julie P. Doshier  
Counsel for the Kaufman County Appraisal District  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
500 North Akard Street, Suite 1800  
Dallas, Texas 75201

OR2017-27949

Dear Ms. Doshier:

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# 685258 (Internal File #90444).

The Kaufman County Appraisal District (the "district"), which you represent, received a request for certain appraisal and personnel information relating to district employees during a defined time period. You state the district will release some information. You state the district will redact certain information under section 552.130(c) of the Government Code and section 552.147(b) of the Government Code.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.1175, 552.136, and 552.149 of the Government Code. We have considered the exceptions you claim and reviewed the

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<sup>1</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental 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. *Id.* § 552.147(b).

submitted representative sample of information.<sup>2</sup> We have also received and considered the requestor's comments. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we note the requestor asserts the district has previously released some of the submitted information. 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 such information from further disclosure, unless its public release is expressly prohibited by law or the information is confidential by law. *See id.* § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 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). Accordingly, pursuant to section 552.007, the district may not now withhold any information that was previously released unless its release is expressly prohibited by law or the information is confidential by law. However, the district claims sections 552.101, 552.1175, 552.136, and 552.149 of the Government Code. Because these sections can make information confidential under the Act, we will consider the applicability of these exceptions to any information that was previously released. Further, to the extent the submitted information was not previously released, we will address the district's arguments against disclosure.

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. This section encompasses information protected by other statutes, such as section 22.27(a) of the Tax Code. Section 22.27(a) provides the following:

Rendition statements, real and personal property reports, attachments to those statements and reports, and other information the owner of property provides to the appraisal office in connection with the appraisal of the property, including income and expense information related to a property filed with an appraisal office and information voluntarily disclosed to an appraisal office or the comptroller about real or personal property sales prices after a promise it will be held confidential, are confidential and not open to public inspection. The statements and reports and the information they contain about specific real or personal property or a specific real or personal property owner and information voluntarily disclosed to an appraisal office about real or personal property sales prices after a promise it will be held confidential may not be disclosed to anyone other than an employee of the appraisal office who appraises property except as authorized by Subsection (b) of this section.

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<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Tax Code § 22.27(a). You state the district is an “appraisal office” for purposes of section 22.27(a). You inform us the marked information consists of information voluntarily disclosed to the district under a promise of confidentiality about real or personal property sales prices. None of the exceptions in section 22.27(b) apply in this instance. *See id.* § 22.27(b). Based on your representations and our review, we find the district must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code.<sup>3</sup>

Section 552.101 of the Government Code also encompasses section 25.025 of the Tax Code, which states, in pertinent part:

(b) Information in appraisal records under Section 25.02 is confidential and is available only for the official use of the appraisal district, this state, the comptroller, and taxing units and political subdivisions of this state if:

(1) the information identifies the home address of a named individual to whom this section applies; and

(2) the individual chooses to restrict public access to the information on the form prescribed for that purpose by the comptroller under Section 5.07.

(c) A choice made under Subsection (b) remains valid until rescinded in writing by the individual.

(d) This section does not prohibit the public disclosure of information in appraisal records that identifies property according to an address if the information does not identify an individual who has made an election under Subsection (b) in connection with the individual’s address.

*Id.* § 25.025(b)-(d). Section 25.025(b) applies, in part, to “a current or former peace officer as defined by Article 2.12, Code of Criminal Procedure, and the spouse or surviving spouse of the peace officer[.]” *Id.* § 25.025(a)(1). Section 25.02 of the Tax Code prescribes the information that must be contained within appraisal records. *See id.* § 25.02. This information includes the name and address of the owner of the property. *See id.* § 25.02(a)(1). You assert, and we agree, the information at issue contains the information required to be contained in appraisal records under section 25.02 of the Tax Code. Thus, we conclude the information at issue consists of an appraisal record for purposes of section 25.025(b) of the Tax Code.

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

You seek to withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 25.025(b) of the Tax Code. You inform us the owner of the property at issue is a peace officer as defined by article 2.12 of the Code of Criminal Procedure. You state, and provide documentation demonstrating, the peace officer filed a request for confidentiality pursuant to section 25.025 of the Tax Code, and that the request for confidentiality has not been rescinded. Upon review, we find the information you have marked is confidential under section 25.025(b) of the Tax Code and the district must withhold it under section 552.101 on that basis.<sup>4</sup> *See id.* § 25.02(b).

Section 552.101 of the Government Code also 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.). Thus, the district must withhold the marked public citizen's date of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). You state some of the remaining information pertains to a peace officer as defined by article 2.12 of the Code of Criminal Procedure. Thus, to the extent the peace officer at issue elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, the district must withhold the remaining information you have marked under section 552.1175 of the Government Code. If the no election is made under section 552.1175(b), the district may not withhold this information under section 552.1175.

You assert some of the remaining information is confidential under section 552.136 of the Government Code. Section 552.136 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." *Id.* § 552.136(b). Section 552.136(a) defines "access device" as "a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money,

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). Upon review, we find you have not demonstrated the information at issue consists of an access device number for purposes of section 552.136. Accordingly, the district may not withhold this information under section 552.136 of the Government Code.

In summary, the district must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code. The district must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 25.025(b) of the Tax Code. The district must withhold the marked public citizen’s date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the peace officer at issue elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, the district must withhold the remaining information you have marked under section 552.1175 of the Government Code. The district 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,



Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/sb

Ref: ID# 685258

Enc. Submitted documents

c: Requestor  
(w/o enclosures)