



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 19, 2017

Ms. Kristen Lee  
Assistant County Attorney  
Harris County Attorney's Office  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002

OR2017-28745

Dear Ms. Lee:

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# 689042 (C.A. File No. 17PIA0641).

The Harris County Constable, Precinct Five (the "constable's office") received a request for all information for a specified address during a designated period of time. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request because it does not consist of the requested records pertaining to the specified address. This ruling does not address the public availability of any information that is not responsive to the request and the constable's office is not required to release such information in response to this request.<sup>1</sup>

Next, we must address the constable office's obligations under the Act. Section 552.301 prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state

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<sup>1</sup>As we are able to make this determination, we need not address your arguments against disclosure of this information.

the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code. § 552.301(b). The constable's office received the request for information on September 20, 2017. The submitted documents demonstrate the constable's office sought and received clarification of the request on September 21, 2017. *See id.* § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *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). Accordingly, the constable's office was required to provide the information required by section 552.301(b) by October 5, 2017. The envelope in which the constable's office submitted to this office the information required by section 552.301(b) was post-marked October 11, 2017. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the constable's office failed to comply with the requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The constable's office claims section 552.108 of the Government Code for the submitted information. However, we find you have failed to establish a compelling reason to address your claimed exception. We note sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness.<sup>2</sup> Therefore, we will address the applicability of these sections to 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 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. This office has also concluded some kinds of medical information are generally highly intimate or

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<sup>2</sup>The 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).

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.). Upon review, we find portions of the submitted responsive information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the constable's office must withhold all public citizens' dates of birth and the information we 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. Gov't Code § 552.130. Accordingly, the constable's office must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code.

In summary, the constable's office must withhold all public citizens' dates of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The constable's office must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code. The constable's office must release the remaining responsive 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,



Jahna Ward  
Assistant Attorney General  
Open Records Division

JW/tdw

Ref: ID# 689042

Enc. Submitted documents

c: Requestor  
(w/o enclosures)