



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 22, 2018

Mr. Adam Anderson  
Assistant County Attorney  
Montgomery County  
501 North Thompson, Suite 300  
Conroe, Texas 77301

OR2018-01309

Dear Mr. Anderson:

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# 693187.

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident. You state the sheriff's office released some information. You claim some of the submitted information is excepted from disclosure under section 552.130 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the sheriff's office has redacted motor vehicle record information pursuant to section 552.130(c) of the Government Code.<sup>1</sup> However, we note the sheriff's office also redacted a date of birth. A governmental body may not withhold information from the public without asking this office for a decision under section 552.301 of the Government Code unless a provision of the Act or a previous determination specifically authorizes the governmental body to do so. *See* Gov't Code § 552.301(a); *see also* Open Records Decision No. 673 (2001) (previous determinations). The sheriff's office does not assert, nor does our

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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. *See* 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).

review of the records indicate, the sheriff's office has been authorized to withhold a date of birth without seeking a ruling from this office. *See* Gov't Code § 552.301(a); ORD 673. Therefore, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of this information does not inhibit our ability to make a ruling. In the future, however, the sheriff's office should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov't Code § 552.302.

We understand the sheriff's office to assert the date of birth it redacted is excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. 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. 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.). Thus, the sheriff's office must withhold the public citizen's date of birth it redacted under section 552.101 of the Government Code in conjunction with common-law privacy.

As noted above, the sheriff's office redacted some information pursuant to section 552.130(c) 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. Accordingly, the sheriff's office must withhold most of the motor vehicle record information it redacted under section 552.130 of the Government Code. Further, we find the submitted video recordings contain motor vehicle record information. You state the sheriff's office lacks the technological capability to redact the confidential information in the video recordings. Accordingly, the sheriff's office must withhold the submitted video recordings in their entireties under section 552.130 of the Government Code. *See* Open Records Decision No. 364 (1983). However, we find the sheriff's office has not demonstrated the information we marked for release is subject to section 552.130, and the sheriff's office may not withhold it on that basis.

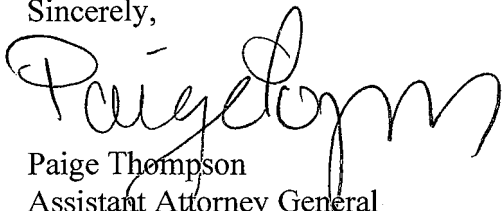
In summary, the sheriff's office must withhold the public citizen's date of birth it redacted under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we marked for release, the sheriff's office must withhold the motor vehicle record information it redacted under section 552.130 of the

Government Code and the submitted video recordings in their entireties under section 552.130 of the Government Code. The sheriff's office 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,

A handwritten signature in black ink, appearing to read "Paige Thompson". The signature is written in a cursive, flowing style.

Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/eb

Ref: ID# 693187

Enc. Submitted documents

c: Requestor  
(w/o enclosures)