February 13, 2018

Mr. Kenneth Moreland
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

Dear Mr. Moreland:

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# 694937 (OOG ID# 17-411).

The Office of the Governor (the “governor’s office”) received a request for the applications and letters of recommendations submitted to the governor’s office regarding the 229th Judicial District Court position. You state you have released some information. The governor’s office states it will redact information under section 552.130(c) of the Government Code, and pursuant to the previous determination in Open Records Decision No. 684 (2009).¹ Further, the governor’s office states it will redact information pursuant to section 552.1175(f) of the Government Code.² You claim the submitted information is

¹Section 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). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including e-mail addresses of members of the public under section 552.137, without the necessity of requesting an attorney general decision.

²We note section 552.1175(f) of the Government Code authorizes a governmental body to redact under section 552.1175(b) without the necessity of requesting a decision from this office, the home addresses and telephone numbers, emergency contact information, dates of birth, social security number, and family member information of certain individuals who properly elect to keep this information confidential. See Gov’t Code § 552.1175(b), (c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.1175(h). See id § 552.1175(g), (h).
excepted from disclosure under sections 552.101 and 552.158 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor specifically excludes health related information, and information regarding an individual's license to carry from the scope of the request. Accordingly, these types of information are not responsive to the instant request. This ruling does not address the public availability of non-responsive information, nor is the governor's office required to release non-responsive information to this requestor.

You raise section 552.158 of the Government Code for some of the submitted information. Section 552.158 provides:

The following information obtained by the governor or senate in connection with an applicant for an appointment by the governor is excepted from the requirements of section 552.021:

(1) the applicant’s home address;

(2) the applicant’s home telephone number; and

(3) the applicant’s social security number.

Gov’t Code § 552.158. The governor’s office informs us the information at issue pertains to applicants for an appointment by the governor. We note section 552.158 is also applicable to cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. Cf. Open Records Decision No. 506 at 5-6 (1988) (confidentiality of section 552.117 extends to cellular telephone numbers of employees or officials who pay directly for cellular telephone service). Therefore, the governor’s office must withhold the information you marked under section 552.158 of the Government Code; however, the cellular telephone numbers may only be withheld if a governmental body does not pay for the cellular telephone service.

The governor’s office asserts the dates of birth are excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 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. 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 governor’s office must withhold all public citizens’
dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the governor’s office must withhold the information you marked under section 552.158 of the Government Code. The governor’s office must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The governor’s office must release the remaining responsive information.

Finally, you ask this office to issue a previous determination permitting the governor’s office to withhold public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. See Gov’t Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). After due consideration, we have decided to grant your request on this matter. Therefore, this letter ruling authorizes the governor’s office to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy. We note common-law privacy is a personal right that lapses at an individual’s death. See Moore v. Charles B. Pierce Film Enters., Inc., 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref’d n.r.e.); see also Open Records Decision Nos. 620 (1993), 272 (1981), 192 (1978). Therefore, this previous determination authorizes the governor’s office to withhold dates of birth of living individuals. This previous determination is not applicable to dates of birth belonging to deceased individuals. We also note a person or a person’s authorized representative has a special right of access under section 552.023 of the Government Code to information that is protected from public disclosure by laws intended to protect the person’s privacy interests. See Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, this previous determination is not applicable to dates of birth requested by a person or the authorized representative of a person whose date of birth is at issue. Furthermore, information filed with a court is not protected by common-law privacy. See Gov’t Code § 552.022(a)(17); Star-Telegram v. Walker, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Accordingly, this previous determination is not applicable to dates of birth contained in court-filed documents. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the governor’s office need not ask for a decision from this office again with respect to this type of information. See ORD 673 at 7-8 (listing elements of second type of previous determination under Gov’t Code § 552.301(a)).

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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/gw

Ref: ID# 694937

Enc. Submitted documents

c: Requestor
   (w/o enclosures)