



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 1, 2018

Mr. Dustin Chapman  
County Administrator  
McLennan County  
P.O. Box 1728  
Waco, Texas 76703-1728

OR2018-04817

Dear Mr. Chapman:

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# 697827.

The McLennan County Information Technologies Department (the "department") received a request for "the entire message store" for a specified e-mail address. The department claims the request for information was not a proper request for information under the Act. In the alternative, the department claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions the department claims and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, the department argues the instant request was not a proper request under the Act because it was received by the director of the department. The department states, "Our position is that the [department does not become the public information officer for [information stored for departments and offices of McLennan County] merely because it

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<sup>1</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 those records contain substantially different types of information than that submitted to this office.

stores and has access to it on behalf of another department or office.” However, this office has held a written communication that reasonably can be judged to be a request for public information constitutes a request for information under the Act. *See* Open Records Decision Nos. 497 at 3 (1988), 44 at 2 (1974). In this regard, we note a request for information need not refer to the Act or be addressed to the officer for public information. ORDs 497 at 3, 44 at 2; *see also* Gov’t Code § 552.202 (each department head of a governmental body is an agent of its officer for public information for the purposes of receiving requests under the Act). In this instance, the request was submitted to and received by the department and seeks information maintained by the department. Thus, we find the instant request to be a valid request for information. We note, although the Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990). As the department has submitted information it deems responsive to the request and claims exceptions to its disclosure, we will consider the department’s claimed exceptions to disclosure of the submitted information.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information made confidential by article 35.29(a) of the Code of Criminal Procedure, which reads as follows:

Except as provided by Subsections (b) and (c), information collected by the court or by a prosecuting attorney during the jury selection process about a person who serves as a juror, including the juror’s home address, home telephone number, social security number, driver’s license number, and other personal information, is confidential and may not be disclosed by the court, the prosecuting attorney, the defense counsel, or any court personnel.

Crim. Proc. Code art. 35.29. Article 35.29 makes confidential certain personal information pertaining only to those individuals who actually served on the petit jury in a criminal trial. We note, and the department acknowledges, juror names are not confidential under article 35.29. Therefore, the department must withhold the jurors’ home addresses within Exhibit D under section 552.101 of the Government Code in conjunction with article 35.29(a) of the Code of Criminal Procedure. However, we find none of the remaining information at issue is confidential under article 35.29(a), and the department may not withhold any of the remaining information under section 552.101 on that ground.

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 department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

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). *See Gov't Code* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, an e-mail address that a governmental entity maintains for one of its officials or employees, or a personal e-mail address belonging to a department employee or official used to conduct official government business. *See Austin Bulldog v. Leffingwell*, 490 S.W.3d 240 (Tex. App.—Austin 2016, no pet.) (holding personal e-mail addresses of government officials used to conduct official government business are not e-mail addresses of “members of the public” for purposes of Gov't Code § 552.137(a)). We are unable to discern whether the e-mail addresses within the remaining documents belong to department employees or officials or fall within the scope of section 552.137(c). Accordingly, we must rule conditionally. To the extent the e-mail addresses at issue belong to members of the public, the department must withhold such e-mail addresses under section 552.137, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release. *See id.* § 552.137(b). However, to the extent the e-mail addresses at issue are excluded by subsection 552.137(c) or belong to a department employee or official, the e-mail addresses may not be withheld under section 552.137 of the Government Code.

In summary, the department must withhold the jurors' home addresses within Exhibit D under section 552.101 of the Government Code in conjunction with article 35.29(a) of the Code of Criminal Procedure. The department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the e-mail addresses at issue belong to members of the public, the department must withhold such e-mail addresses under section 552.137, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release. The department 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](#), 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 "Claire Morris Sloan". The signature is fluid and cursive, with a large initial "C" and "M".

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 697827

Enc. Submitted documents

c: Requestor  
(w/o enclosures)