



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

January 31, 2019

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

OR2019-02935

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# 748651 (ORR# 18PIA 583).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified investigation. You state the sheriff's office has released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert the submitted video recordings contain motor vehicle record information that is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, or 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(a). Upon review, we agree the submitted video recordings contain motor vehicle record information. In this instance, the sheriff's office states it does not possess the

technological capability to redact information from video files. Thus, we agree the sheriff's office must withhold the video recordings in their entirety under section 552.130 of the Government Code.<sup>1</sup> See Open Records Decision No. 364 (1983).

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. 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 the public citizens' dates of birth within the audio recordings are subject to section 552.101 of the Government Code in conjunction with common-law privacy. You state the sheriff's office does not have the technological capability to redact the dates of birth from the audio recordings. However, because the sheriff's office had the ability to copy the submitted audio recordings for our review, we believe the sheriff's office has the capability to produce a copy of only the non-confidential portions of the audio recordings. Accordingly, the sheriff's office must withhold the public citizens' dates of birth within the submitted audio recordings under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office has failed to demonstrate, however, the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the sheriff's office may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, the sheriff's office must withhold the video recordings in their entirety under section 552.130 of the Government Code. The sheriff's office must withhold the public citizens' dates of birth within the submitted audio recordings under section 552.101 of the Government Code in conjunction with common-law privacy. 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.

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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,



Kelly McWethy  
Assistant Attorney General  
Open Records Division

KSM/gw

Ref: ID# 748651

Enc. Submitted documents

c: Requestor  
(w/o enclosures)