



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 8, 2019

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

OR2019-03792

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# 751160 (ORR# 18PIA606).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for information related to a specified incident involving a named individual. The sheriff's office claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions the sheriff's office claims and reviewed 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. *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.). Because "the right of privacy is purely personal[.]" that right "terminates upon the death of the person whose privacy is invaded[.]" *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v.*

Belo Broadcasting Corp., 472 F. Supp. 145, 147 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded” (quoting RESTATEMENT (SECOND) OF TORTS § 6521)); Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 (1981) (“the right of privacy is personal and lapses upon death”). Therefore, information pertaining solely to a deceased individual may not be withheld under section 552.101 of the Government Code on the basis of common-law privacy. We also note the requestor’s client is one of the individuals whose privacy interest is at issue. See Gov’t Code § 552.023(a) (“person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, the requestor has a right of access to information pertaining to her client and the sheriff’s office may not withhold information about that individual under section 552.101 on the basis of common-law privacy. Thus, with the exception of the requestor’s client’s date of birth, the sheriff’s office must withhold all living public citizens’ dates of birth 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. See Gov’t Code § 552.130. We note section 552.130 protects personal privacy. Because the right of privacy lapses at death, motor vehicle record information that pertains solely to a deceased individual may not be withheld under section 552.130. See *Moore*, 589 S.W.2d at 491; see also Attorney General Opinions JM-229; H-917; ORD 272. Further, the requestor has a right of access to her client’s motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from her under section 552.130. See Gov’t Code § 552.023(a); ORD 481 at 4. Thus, the sheriff’s office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.


In summary, with the exception of the requestor’s client’s date of birth, the sheriff’s office must withhold all living public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff’s office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The sheriff’s office must release the remaining information to this requestor.¹

¹We note the requestor has a right of access to some of the information being released. See Gov’t Code § 552.023(a); ORD 481 at 4. Thus, if the sheriff’s office receives another request for the same information from a different requestor, the sheriff’s office must again seek a decision from this office.

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 cursive script, appearing to read "Claire V. Morris Sloan".

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/eb

Ref: ID# 751160

Enc. Submitted documents

c: Requestor
(w/o enclosures)