



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 25, 2019

Mr. Roberts M. Summers
Director of Government Filings
Texas Secretary of State
P.O. Box 13375
Austin, Texas 78711-3375

OR2019-05241

Dear Mr. Summers:

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# 751538.

The Office of the Secretary of State (the "secretary's office") received a request for information pertaining to a specified notary complaint involving a named individual.¹ You state the secretary's office is releasing some information to the requestor. You state the secretary's office is redacting motor vehicle record information pursuant to section 552.130(c) of the Government Code, information pursuant to section 552.136(c) of the Government Code, e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009), social security numbers pursuant to

¹We note the secretary's office sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

section 552.147(b) of the Government Code, and certain dates of birth pursuant to Open Records Letter No. 2016-07153 (2016).² You claim some of the requested information is excepted from disclosure under sections 552.101 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we understand the secretary's office to assert the responsive test item was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2017-26309 (2017). Although you seek to withhold information pursuant to this prior ruling, we note the test item sought in the present request for information is not the same exact information as the test item at issue in the prior ruling. Thus, the secretary's office may not rely on Open Records Letter No. 2017-26309 as a previous determination for the information at issue in the present request. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely the same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). You did not submit the requested test item for our review. Therefore, we find you must release the requested test item to the requestor at this time.³ *See* Gov't Code §§ 552.301, .302.

Section 552.101 of the Government Code excepts "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, 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.*

²Section 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). Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of seeking a decision from this office. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b). Open Records Letter No. 2016-07153 authorizes the secretary's office to withhold public citizens' dates of birth from notary applications and contained in the Notary Public Unit Database of the secretary's office under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

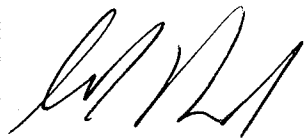
³As we are able to make this determination, we need not address your argument against disclosure of this information.

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). We note an individual's name and telephone number are generally not private information under common-law privacy. See Open Records Decision No. 554 at 3 (1990) (disclosure of person's name, address, or telephone number not invasion of privacy). 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.). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the secretary's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate any of the remaining information you marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the secretary's office may not withhold any of the remaining information under section 552.101 of the Government Code on that basis. The secretary'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, 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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/gw

Ref: ID# 751538

Enc. Submitted documents

c: Requestor
(w/o enclosures)