



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 4, 2019

Ms. Laura Anne Coats
Assistant District Attorney
Dallas County
133 North Riverfront Boulevard, LB-19
Dallas, Texas 75207-4399

OR2019-05857

Dear Ms. Coats:

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# 753113.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified prosecution. The district attorney's office states it will withhold information under section 552.147(b) of the Government Code.¹ The district attorney's office claims some of the submitted information is excepted from disclosure under sections 552.101, 552.118, and 552.130 of the Government Code.² We have considered the claimed exceptions 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. This section encompasses chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National Crime

¹Section 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 under the Act. *See* Gov't Code § 552.147(b).

²It is unclear whether the district attorney's office complied with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). *See* Gov't Code § 552.301(b), (e). Regardless, because sections 552.101, 552.118, and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301, we will consider the claims of the district attorney's office under those sections.

Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code makes CHRI the Texas Department of Public Safety (“DPS”) maintains confidential, except DPS may disseminate this information as provided in subchapters E-1 and F of chapter 411 of the Government Code. *See* Gov’t Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.083(b)(1), .089. The submitted information contains a Federal Bureau of Investigation (“FBI”) number that constitutes CHRI generated by the FBI. Therefore, the district attorney’s office must withhold the submitted FBI number under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

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 district attorney’s office must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.118 of the Government Code reads as follows:

Information is excepted from the requirements of Section 552.021 if it is:

- (1) information on or derived from an official prescription form or electronic prescription record filed with the Texas State Board of Pharmacy under Section 481.075, Health and Safety Code; or
- (2) other information collected under Section 481.075 of that code.

Gov’t Code § 552.118. Upon review, we find the district attorney’s office has failed to demonstrate any of the remaining information was filed with the Texas State Board of Pharmacy or collected under section 481.075 of the Health and Safety Code. Therefore, the district attorney’s office may not withhold any of the remaining information under section 552.118 of the Government Code.

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 id.* § 552.130. Upon review, we find some of the

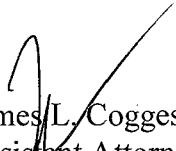
information that the district attorney's office seeks to withhold under section 552.130 does not consist of motor vehicle record information or information pertaining to a personal identification document issued by a Texas agency or another state or country or a local agency authorized to issue an identification document. Therefore, the district attorney's office may not withhold this information, which we have marked for release, under section 552.130. However, we agree the district attorney's office must withhold the remaining information it has marked, as well as the information we have marked, under section 552.130 of the Government Code.

In summary, the district attorney's office must withhold the following: (1) the submitted FBI number under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; (2) all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) with the exception of the information we have marked for release, the information marked under section 552.130 of the Government Code. The district attorney'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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 753113

Enc. Submitted documents

c: Requestor
(w/o enclosures)