



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 26, 2019

Dr. Fernando C. Gomez  
Vice Chancellor and General Counsel  
The Texas State University System  
601 Colorado Street  
Austin, Texas 78701-2904

OR2019-06588A

Dear Dr. Gomez:

This office issued Open Records Letter No. 2019-06588 (2019) on March 8, 2019. We have determined the prior ruling should be corrected. *See* Gov't Code §§ 552.306, .352. Accordingly, we hereby withdraw the prior ruling. This decision is substituted for Open Records Letter No. 2019-06588 and serves as the correct ruling. *See generally id.* § 552.011 (Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). This ruling was assigned ID# 767424.

Lamar University (the "university") received a request for a specified incident report. The university represents it will withhold information under sections 552.130(c) and 552.147(b) of the Government Code.<sup>1</sup> The university claims some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

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<sup>1</sup>Section 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 552.147(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 id.* § 552.147(b).

Section 552.108(a)(2) of the Government Code exempts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The university states the information it has marked under section 552.108(a)(2) pertains to a case that concluded in a result other than conviction or deferred adjudication. Thus, the university may withhold the information it has marked under section 552.108(a)(2) of the Government Code.<sup>2</sup>

Section 552.101 of the Government Code exempts 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.). Thus, the university must withhold the date of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the university may withhold the information it has marked under section 552.108(a)(2) of the Government Code. The university must withhold the date of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The university must release the remaining information.

Finally, the university asks this office to issue a previous determination permitting it to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). However, we decline to issue one at this time. Accordingly, this letter ruling is limited to the particular records 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 records 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/>

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<sup>2</sup>As our ruling is dispositive, we do not address the other arguments of the university to withhold this information.

[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/eb

Ref: ID# 767424

Enc. Submitted documents

c: Requestor  
(w/o enclosures)