



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 3, 2019

Ms. Alexandra Golden
Assistant District Attorney
Brazoria County
111 East Locust, Suite 408A
Angleton, Texas 77515

OR2019-09011

Dear Ms. Golden:

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# 759587 (ORR# 19-0179).

The Brazoria County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified incident report. The district attorney's office claims the requested information is excepted from disclosure under section 552.117 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Section 552.117(a)(3) of the Government Code excepts from public disclosure the home address and telephone number, social security number, emergency contact information, and family member information of current or former employees of the department or any division of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code. Gov't Code § 552.117(a)(3). We note section 552.117 applies only to information that a governmental body holds in an employment context. The submitted information consists of law enforcement records and, thus, we find the district attorney's office does not maintain it in an employment capacity. Accordingly, the district attorney's office may not withhold any of the submitted information under section 552.117(a)(3) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ 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.). The requestor has a right of access to his client’s date of birth pursuant to section 552.023 of the Government Code. *See Gov’t Code § 552.023(a)*; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Nevertheless, the district attorney’s office must withhold the remaining date of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See Gov’t Code § 552.1175*. Some of the remaining information pertains to an individual who may be subject to section 552.1175. Thus, the district attorney’s office must withhold the information we have marked under section 552.1175 of the Government Code if it pertains to an individual who is subject to section 552.1175(a) and the individual elects to restrict access to this information in accordance with section 552.1175(b). However, if the individual is not subject to section 552.1175(a) or does not elect to restrict access to this information in accordance with section 552.1175(b), then the district attorney’s office may not withhold this information under section 552.1175.

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. Because section 552.130 protects personal privacy, the requestor has a right of access to his client’s motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. However, the district attorney’s office must withhold the remaining motor vehicle record information, which we have marked, under section 552.130 of the Government Code.

In summary, with the exception of the date of birth of the requestor’s client, the district attorney’s office must withhold the submitted date of birth under section 552.101 of the

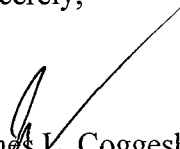
¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).*

Government Code in conjunction with common-law privacy. The district attorney's office must withhold the information we have marked under section 552.1175 of the Government Code if it pertains to an individual who is subject to section 552.1175(a) and the individual elects to restrict access to this information in accordance with section 552.1175(b). The district attorney's office must also withhold the information we have 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# 759587

Enc. Submitted documents

c: Requestor
(w/o enclosures)