



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 24, 2019

Ms. Deanne Lin
Assistant General Counsel
Harris County District Attorney's Office
1019 Congress Street, Floor 15
Houston, Texas 77002

OR2019-10894

Dear Ms. Lin:

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# 761798 (ORR# 19PIA0121).

The Office of Harris County Constable, Precinct 5 (the "constable's office") received a request for information pertaining to a named individual and a specified address. The constable's office claims the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). The constable's office states the submitted information relates to a pending criminal investigation. However, the constable's office has also provided a representation from a representative of the constable's office that states the submitted information pertains to an investigation that did not have a final disposition of guilt or deferred adjudication. Because the constable's office has provided this office with conflicting representations, we are unable to determine whether the submitted information relates to an ongoing criminal case or a closed case that did not

result in conviction or deferred adjudication. Further we find the constable's office failed to demonstrate release of the submitted information would interfere with law enforcement and crime prevention. Thus, we find the constable's office has not demonstrated the applicability of section 552.108(a)(1) to the submitted information. Accordingly, the constable's office may not withhold the submitted information under section 552.108(a)(1) 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 own 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 constable's office must withhold the remaining date of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 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*. Because section 552.130 protects personal privacy, the requestor has a right of access to his own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. However, the constable'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 requestor's date of birth, the constable's office must withhold the submitted date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The constable's office must also withhold the information we have marked under section 552.130 of the Government Code. The constable's office must release the remaining information.²

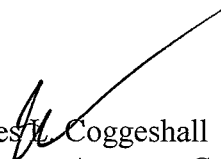
¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987)*.

²Because the requestor has a special right of access to some of the information being released, the constable's office must again seek a decision from this office if it receives another request for the same information from another requestor.

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/gw

Ref: ID# 761798

Enc. Submitted documents

c: Requestor
(w/o enclosures)