



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 29, 2019

Mr. Ramit Plushnick-Masti  
Public Information Officer  
Houston Forensic Science Center, Inc.  
1301 Fannin Street, Suite 170  
Houston, Texas 77002-7010

OR2019-11341

Dear Mr. Plushnick-Masti:

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# 760915 (ORR# 02012019).

The Houston Forensic Science Center, Inc. ("HFSC") received a request for information pertaining to a named former employee. HFSC claims the requested information is excepted from disclosure under sections 552.103 and 552.107(2) of the Government Code.<sup>1</sup> We have considered the claimed exceptions and reviewed the submitted information. We have also considered comments submitted by a representative of the former employee. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note HFSC has redacted information from the submitted documents. HFSC does not assert, nor does our review of our records indicate, it has been authorized to withhold any such information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2000). Because we can discern the nature of the information that has been redacted, being deprived of it does not inhibit our ability to

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<sup>1</sup>We understand HFSC to raise section 552.107(2) based on its arguments.

make a ruling in this instance. Nevertheless, be advised a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering that the redacted information be released. *See* Gov't Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested"), .302.

Section 552.103 of the Government Code provides, in relevant part, as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

*Id.* § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents to show section 552.103 is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the governmental body received the request for information and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

HFSC asserts the requested information is at issue in litigation that was pending against HFSC when it received the request. However, once information has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the pending litigation is not excepted from disclosure under section 552.103(a). HFSC states "[t]his information has been disclosed to the opposing party in the litigation, through discovery and pursuant to the court's injunction order." Accordingly, because HFSC informs us the opposing party to the litigation at issue has seen or had access to the submitted information, HFSC may not withhold it under section 552.103.

Section 552.107(2) of the Government Code provides information is excepted from disclosure if “a court by order has prohibited disclosure of the information.” Gov’t Code § 552.107(2). HFSC has submitted a copy of a temporary injunction that was issued by the court of the pending litigation discussed above. Upon review, we find HFSC has failed to establish the temporary injunction at issue prohibits the disclosure of the requested information in response to the request for information under the Act. Therefore, HFSC may not withhold the submitted information under section 552.107(2) 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.”<sup>2</sup> 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, HFSC must withhold all public citizens’ dates 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. HFSC must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, HFSC must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. HFSC must also withhold the information we have marked under section 552.130 of the Government Code. HFSC must release the remaining information, including the information it redacted from the submitted documents.

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.

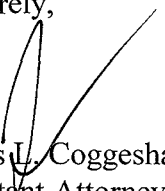
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <http://www.texasattorneygeneral.gov/open/>

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<sup>2</sup>The 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).

[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 J. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/gw

Ref: ID# 760915

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: Third Party  
(w/o enclosures)