



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

May 8, 2019

Ms. Nicole Dempsey  
Assistant County & District Attorney  
Ellis County  
109 South Jackson  
Waxahachie, Texas 75165

OR2018-12309

Dear Ms. Dempsey:

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# 767496.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for a specified incident report. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim 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. 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 court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *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.). Accordingly, the sheriff's office must withhold the public citizen's date of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note the information at issue also includes the requestor's spouse's date of birth. Section 552.023(a) of the Government Code states that a person or a person's authorized

representative has a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, the requestor has a right of access to his spouse's date of birth if he is acting as the authorized representative of his spouse. *See* Gov't Code § 552.023(a); ORD 481 at 4. Therefore, if the requestor is acting as the authorized representative of his spouse, then the sheriff's office may not withhold the requestor's spouse's date of birth, which we marked, under section 552.101 in conjunction with common-law privacy. However, if the requestor is not acting as the authorized representative of his spouse, then the sheriff's office must also withhold the date of birth we marked under section 552.101 in conjunction with common-law privacy. In either event, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern, and the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.130 of the Government Code excepts from disclosure 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. Upon review, we find the remaining information includes motor vehicle record information subject to section 552.130. Therefore, the sheriff's office must withhold the motor vehicle record information you marked under section 552.130 of the Government Code. We note section 552.130 protects personal privacy. As noted above, the requestor may be acting as the authorized representative of his spouse, and may have a right of access to the motor vehicle record information pertaining to his spouse that would otherwise be confidential. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, if the requestor is not acting as the authorized representative of his spouse, the sheriff's office must also withhold the motor vehicle record information we marked under section 552.130 of the Government Code. However, if the requestor is acting as the authorized representative of his spouse, then the sheriff's office may not withhold the information we marked under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold the public citizen's date of birth you marked, and, if the requestor is not acting as the authorized representative of his spouse, the date of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the motor vehicle record information you marked and, if the requestor is not acting as the authorized representative

of his spouse, the information we marked under section 552.130 of the Government Code. The sheriff's office must release the remaining information.<sup>1</sup>

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](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,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/be

Ref: ID# 767496

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>We note the requestor has a right of access to some of the information being released under section 552.023 of the Government Code. See Gov't Code § 552.023; ORD 481 at 4. Accordingly, if the sheriff's office receives another request for this same information from a different requestor, the sheriff's office must again seek a ruling from this office.