



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 5, 2019

Ms. Mary E. Miller
Assistant District Attorney
Denton County
127 North Woodrow Lane, Suite 300
Denton, Texas 76205

OR2019-14875

Dear Ms. Miller:

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# 776468.

The Denton County Sheriff's Office (the "sheriff's office") received a request for information pertaining to specified incidents. You state you will release some information. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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.). Thus, 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.

Section 552.101 of the Government Code also encompasses the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority. *See Open Records Decision No. 208* at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *Open Records Decision No. 279* at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See Open Records Decision Nos. 582* at 2 (1990), 515 at 4 (1988). However, witnesses who provide information in the course of an investigation but do not make a report of the violation are not informants for the purposes of claiming the informer's privilege. The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. *Open Records Decision No. 549* at 5 (1990). We note the informer's privilege does not apply where the informant's identity is known to the individual who is the subject of the complaint. *See ORD 208* at 1-2.

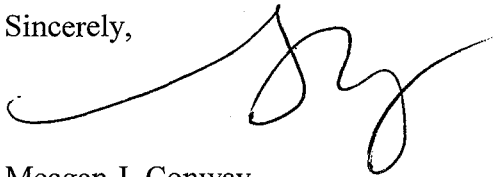
You state portions of the remaining information identify a complainant who reported violations of law to the sheriff's office. Based upon your representations and our review, we conclude the department has demonstrated the applicability of the common-law informer's privilege to some of the information at issue. Therefore, with the exception of the information we marked for release, the sheriff's office may withhold the information you marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, we find the remaining information you marked does not identify an individual who reported a criminal violation to the sheriff's office for purposes of the informer's privilege. Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.101 on that basis.

In summary, 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. With the exception of the information we marked for release, the sheriff's office may withhold the information you marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The sheriff'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,

A handwritten signature in black ink, appearing to read 'MJC', written over a horizontal line.

Meagan J. Conway
Assistant Attorney General
Open Records Division

MC/be

Ref: ID# 776468

Enc. Submitted documents

c: Requestor
(w/o enclosures)