



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 23, 2019

Mr. Robert Schell  
Assistant Ellis County & District Attorney  
Ellis County  
109 South Jackson Street  
Waxahachie, Texas 75165

OR2019-26552

Dear Mr. Schell:

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# 787093.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See Id.* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information you marked pertains to a closed

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

case that concluded in a result other than conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to the information at issue. Thus, the sheriff's office may withhold the information you marked under section 552.108(a)(2) of the Government Code.

Section 552.101 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 Third 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.). We note the requestor has a right of access to his own date of birth. *See* Gov't Code § 552.023 (a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, with the exception of the requestor's date of birth, the sheriff's office 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 or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). We note, however, section 552.130 is designed to protect the privacy of individuals. Thus, the requestor has a right of access to some of the marked motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from the requestor under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, with the exception of the information we marked for release, the sheriff's office must withhold the information you marked and the additional information we marked under section 552.130 of the Government Code.

In summary, the sheriff's office may withhold the information you marked under section 552.108(a)(2) of the Government Code. With the exception of the requestor's date of birth, the sheriff's office must withhold all public citizens' dates of birth 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 must withhold the information you marked and we marked under section 552.130 of the Government Code. 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Michelle Case", with a long horizontal flourish extending to the right.

D. Michelle Case  
Assistant Attorney General  
Open Records Division

DMC/gw

Ref: ID# 787093

Enc. Submitted documents

c: Requestor  
(w/o enclosures)