



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 30, 2019

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

OR2019-27321

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# 788249.

The Ellis County Sheriff's Office (the "sheriff's office") received two requests from the same requestor for information pertaining to a specified incident. We understand you are withholding social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2019-19087 (2019). In that ruling, we determined the sheriff's office (1) must withhold certain information under section 552.101 of the Government Code in conjunction with

¹ Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

² Although the sheriff's office raises section 552.101 of the Government Code in conjunction with section 411.085 of the Government Code, we understand it to raise section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. Further, although the sheriff's office also raises section 552.101 of the Government Code in conjunction with chapter 57 of the Texas Code of Criminal Procedure for the submitted information, the sheriff's office provides no argument explaining how this chapter applies to the information at issue. Therefore, we assume the sheriff's office no longer asserts this argument. *See* Gov't Code §§ 552.301, .302.

common-law privacy, (2) must withhold certain information under section 552.130 of the Government Code, (3) may withhold certain information under section 552.147 of the Government Code, and (4) must release the remaining information. You now seek to withhold the information at issue under section 552.108 of the Government Code. Section 552.007 of the Government Code provides information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See Gov't Code § 552.007*; Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Accordingly, pursuant to section 552.007, the sheriff's office may not withhold previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although you raise section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See Gov't Code § 552.007*; Open Records Decision No. 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, the sheriff's office may not now withhold the previously released information under section 552.108 of the Government Code. Additionally, the previous requestor had a right of access to information the present requestor does not. Thus, with respect to the information that was withheld in the previous ruling, we find the law, facts, and circumstances have changed since the issuance of the previous ruling, and the sheriff's office may not rely on Open Records Letter No. 2019-19087 as a previous determination. However, as sections 552.101 and 552.130 make information confidential under the Act, we will consider the applicability of these sections to 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 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, 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 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*. Accordingly, the sheriff's office must withhold the motor vehicle record information you marked under section 552.130 of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). Title 28, part 20 of the

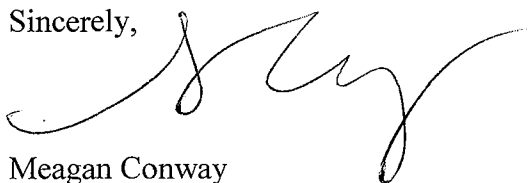
Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1 of the Government Code. *See Gov’t Code* § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F, of the Government Code. Upon review, we find you have not demonstrated any portion of the remaining information consists of CHRI for purposes of chapter 411 of the Government Code, and the sheriff’s office may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

In summary, 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. The sheriff’s office must withhold the motor vehicle record information you 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,



Meagan Conway
Assistant Attorney General
Open Records Division

MC/gw

Mr. Robert Schell - Page 4

Ref: ID# 788249

Enc. Submitted documents

c: Requestor
(w/o enclosures)