



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 15, 2019

Mr. Eric C. Farrar  
Counsel for Galveston County  
Olson & Olson, LLP  
2727 Allen Parkway, Suite 600  
Houston, Texas 77019-2133

OR2019-28807

Dear Ms. Farrar:

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# 791393 (ORR# P190168).

The Galveston County District Attorney's Office (the "district attorney's office"), which you represent, received a request for information pertaining to a specified prosecution. The district attorney's office states it will withhold information pursuant to sections 552.130(c) and 552.147(b) of the Government Code and Open Records Decision No. 684 (2009).<sup>1</sup> The district attorney's office claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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. This section encompasses chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. 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

---

<sup>1</sup> Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). 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 under the Act. *See id.* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of seeking a decision from this office.

regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code makes CHRI the Texas Department of Public Safety (“DPS”) maintains confidential, except DPS may disseminate this information as provided in subchapters E-1 and F of chapter 411 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, but 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 generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. However, driving record information is not made confidential by the confidentiality provisions that govern CHRI. *See* Gov’t Code § 411.082(2)(B) (definition of CHRI does not include driving record information). In addition, section 411.083 does not apply to active warrant information or other information relating to one’s current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Upon review, we find the submitted Federal Bureau of Investigation (“FBI”) numbers and some of the remaining information, which we have marked, are confidential under section 411.083. Therefore, the district attorney’s office must withhold the submitted FBI numbers and the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. However, the remaining information does not contain CHRI for purposes of chapter 411. Accordingly, the remaining information is not confidential under chapter 411, and the district attorney’s office may not withhold it under section 552.101 of the Government Code on that ground.

Section 552.101 of the Government Code also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier. *See* Open Records Decision No. 649 (1996). The district attorney’s office represents it is part of an emergency communication district that is subject to section 772.318 of the Health and Safety Code. The district attorney’s office also states the information it has marked under section 552.318 was provided by a 9-1-1 service supplier. Based on these representations, we agree the district attorney’s office must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 of the Government Code also 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.). The requestor has a right of access to his client’s date of birth pursuant to

section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Nevertheless, the district attorney's office must withhold the remaining dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

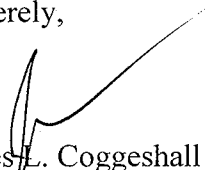
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. The district attorney's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the district attorney's office must withhold the following: (1) (1) the submitted FBI numbers and the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; (2) the information it has marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code; (3) with the exception of the date of birth of the requestor's client, the submitted dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy; and (4) the information we have marked under section 552.130 of the Government Code. The district attorney's office must release the remaining information.<sup>2</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 <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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/rm

---

<sup>2</sup> Because the requestor has a special right of access to some of the information being released, the district attorney's office must again seek a decision from this office if it receives another request for the same information from another requestor.

Mr. Eric C. Farrar - Page 4

Ref: ID# 791393

Enc. Submitted documents

c: Requestor  
(w/o enclosures)