



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 15, 2019

Mr. Robert M. Sumners
Director of Government Filings
Office of the Secretary of State
P.O. Box 13375
Austin, Texas 78711-3375

OR2019-28835

Dear Mr. Sumners:

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# 791547.

The Office of the Secretary of State (the "secretary of state's office") received two requests from the same requestor for information regarding a named notary and specified complaint.¹ You state you have released some information. You state you have redacted motor vehicle record information pursuant to section 552.130(c) of the Government Code, personal e-mail addresses subject to section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009) and social security numbers pursuant to section 552.147(b) of the Government Code.² You claim the submitted information is

¹We note the secretary of state's office sought and received clarification of the second request for information. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

²Section 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). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion. 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 an attorney general decision under the Act. See *id.* § 552.147(b).

excepted from disclosure under sections 552.101 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Section 552.122(b) of the Government Code excepts from disclosure “[a] test item developed by a licensing agency or a governmental body[.]” Gov’t Code § 552.122(b). In Open Records Decision No. 626 (1994), this office determined the term “test item” in section 552.122 includes “any standard means by which an individual’s or group’s knowledge or ability in a particular area is evaluated.” ORD 626 at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* at 7. Traditionally, this office has applied section 552.122 where release of “test items” might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987).

The secretary of state’s office seeks to withhold the submitted questions and answers under section 552.122 of the Government Code. The secretary of state’s office indicates the questions test the knowledge and abilities of applicants in a particular area. The secretary of state’s office also states release of this information could compromise the effectiveness of future examination. Based on these representations and our review, we find the submitted questions are “test items” under section 552.122(b) of the Government Code. Furthermore, we find release of the answers to the questions would reveal the questions themselves. Therefore, the secretary of state’s office may withhold the questions and answers we marked under section 552.122(b) of the Government Code. However, we find you failed to demonstrate the remaining information constitutes a test item or reveals test questions. Thus, the secretary of state’s office may not withhold the remaining information on the basis of section 552.122(b) of the Government Code.

The secretary of state’s office asserts the dates of birth are excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. 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

³We 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.

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, the secretary of state's office must withhold the public citizen's date of birth, which we marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

As noted above, we understand the secretary of state's office is withholding motor vehicle record information pursuant to section 552.130(c) of the Government Code. We note the remaining information contains additional motor vehicle record information. 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(a). Accordingly, the secretary of state's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, the secretary of state's office may withhold the questions and answers we marked under section 552.122(b) of the Government Code. The secretary of state's office must withhold the remaining public citizen's date of birth, which we marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The secretary of state's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The secretary of state'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,



D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/be

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Enc. Submitted documents

c: Requestor
(w/o enclosures)