



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 19, 2019

Ms. Mollie Lerew  
Assistant District Attorney  
Wichita County  
900 7<sup>th</sup> Street, Room 352  
Wichita Falls, Texas 76301

OR2019-32701

Dear Ms. Lerew:

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# 797628 (ORR# 02104).

The Wichita County Sheriff's Office (the "sheriff's office") received a request for a specified offense report. The sheriff's office states it will withhold information pursuant to sections 552.130(c) and 552.147(b) of the Government Code.<sup>1</sup> The sheriff's office states it has released some of the requested information, but 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.

Initially, we note the sheriff's office informs us it is withholding dates of birth without requesting a ruling from this office. However, the sheriff's office does not assert, nor does our review of our records indicate, it has been authorized to withhold such information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2000). Therefore, the sheriff's office may not withhold dates of birth of members of the public without seeking a ruling from this office.

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<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).

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses the informer’s privilege, which has long been recognized by Texas courts. *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). 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, provided the subject of the information does not already know the informer’s identity. 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). 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).

The sheriff’s office states the submitted information contains the identifying information of a complainant who reported possible criminal activities to a law enforcement agency. Upon review, we conclude the sheriff’s office has demonstrated the applicability of the common-law informer’s privilege to some of the information at issue, which we have marked. Therefore, the sheriff’s office may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. However, we find the sheriff’s office has failed to demonstrate the remaining information at issue identifies a complainant for purposes of the informer’s privilege. Thus, the sheriff’s office may not withhold any of the remaining information under section 552.101 on that basis. Accordingly, the sheriff’s office must release the remaining information.

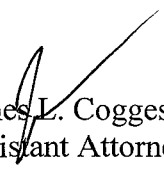
Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 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.). Because the complainant has been de-identified pursuant to the informer’s privilege, the privacy interests in that individual’s dates of birth is sufficiently protected, and the sheriff’s office may not withhold it under common-law privacy. Nevertheless, the sheriff’s office must withhold the remaining dates of birth it has marked under section 552.101 in conjunction with common-law privacy.

In summary, the sheriff's office may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. With the exception of the complainant's date of birth, the sheriff's office must withhold the dates of birth it has marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/rm

Ref: ID# 797628

Enc. Submitted documents

c: Requestor  
(w/o enclosures)