



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 20, 2019

Mr. Tommy L. Coleman
Assistant District Attorney
Polk County
101 West Mill Street, Suite 247
Livingston, Texas 77351

OR2019-32892

Dear Mr. Coleman:

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# 797746.

The Polk County Bail Bond Board (the "board") received a request for the application for a license filed by a named company and a particular board meeting agenda. You state the board has released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 411.083 of the Government Code, which pertains to criminal history record information ("CHRI"). CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov't Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public

¹ Although you cite section 552.117 of the Government Code, we understand you to raise section 552.147 based on the substance of your argument.

Safety (“DPS”) maintains, except 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. 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). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411. Upon review, we find the information we have marked consists of CHRI the board must withhold under section 552.101 in conjunction with section 411.083 of the Government Code.²

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides, “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). There is no indication the requestor has a right of access to the biometric identifiers under section 560.002. *See id.* § 560.002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless the individual consents to disclosure). Accordingly, the board must withhold the biometric identifiers we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.³ However, we find none of the remaining information constitutes biometric identifiers for purposes of section 560.003. Thus, the board may not withhold any of the remaining information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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 board must withhold the public citizen’s date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information is either not highly intimate or embarrassing or is of legitimate public interest. Accordingly, the board may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of 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

² As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

³ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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 board must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. However, you have failed to demonstrate any of the remaining information at issue is subject to section 552.130. Thus, the board may not withhold any of the remaining information at issue under section 552.130 of the Government Code.

Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. *Id.* § 552.147. Upon review, we agree the board may withhold the social security number in the remaining information under section 552.147 of the Government Code. The remaining information does not contain a social security number. Therefore, the board may not withhold any of the remaining information under section 552.147.

In summary, the board must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The board must withhold the biometric identifiers we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The board must withhold the public citizen's date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The board must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The board may withhold the social security number in the remaining information under section 552.147 of the Government Code. The board 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,



Erin Groff
Assistant Attorney General
Open Records Division

EMG/rm

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Enc. Submitted documents

c: Requestor
(w/o enclosures)