



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 25, 2019

Ms. Deanne Lin
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2019-33326

Dear Ms. Lin:

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# 798457 (File No. 19PIA0679).

The Office of the Harris County Constable, Precinct Five (the "constable's office") received a request for information pertaining to a specified address. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim 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 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

¹Although the constable's office also raises section 552.101 of the Government Code, the constable's office has not provided any arguments to support this exception. Therefore, we assume the constable's office has withdrawn its claim this section applies to the submitted information. See Gov't Code §§ 552.301, .302.

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Further, 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.). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

In this instance, you seek to withhold the entirety of the submitted information under section 552.101 in conjunction with common-law privacy. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy. Therefore, the constable's office may not withhold the entirety of the submitted information under section 552.101 of the Government Code on that basis. Nevertheless, upon review, we find portions of the submitted information, which we marked, are highly intimate or embarrassing and not of legitimate public concern. Accordingly, the constable's office must withhold all public citizens' dates of birth and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code exempts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country.² *See* Gov't Code § 552.130. Accordingly, the constable's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, the constable's office must withhold all public citizens' dates of birth and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The constable's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The remaining information must be released.

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.

² The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/gw

Ref: ID# 798457

Enc. Submitted documents

c: Requestor
(w/o enclosures)