



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 26, 2019

Ms. Siobhan K. Karger  
Assistant District Attorney  
Bexar County Criminal District Attorney's Office  
101 West Nueva Street, 7th Floor  
San Antonio, Texas 78205

OR2019-33524

Dear Ms. Karger:

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# 798599 (BCDA File No. 7853-R001902).

The Bexar County Criminal District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified case. The district attorney's office claims the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception the district attorney's office claims and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of a completed investigation that is subject to section 552.022(a)(1). The district attorney's office must release the completed investigation pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. *See id.* The district attorney's office seeks to withhold the submitted information under section 552.103 of the Government Code. However, section 552.103 is discretionary in nature and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the district attorney's office may not withhold the submitted information under section 552.103 of the Government Code. However, because sections 552.101, 552.1175, 552.130, and 552.137 of the Government Code make information confidential under the Act, we will consider the applicability of these sections to the information at issue.<sup>1</sup>

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.). Thus, the district attorney's office must withhold the public citizens' dates of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code excepts from disclosure the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175 also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Section 552.1175 applies, in part, to “criminal investigators of the United States as described by article 2.122(a) Code of Criminal Procedure [.]” *Id.* § 552.1175(a)(7). Upon review, we find a portion of the remaining information pertains to a Federal Bureau of Investigation agent that is held by the district attorney's office in a

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<sup>1</sup> 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).

non-employment capacity. Thus, if the agent at issue is a criminal investigator of the United States as described by article 2.122(a) of the Code of Criminal Procedure and elects to restrict access to his information in accordance with section 552.1175(b), then the district attorney's office must withhold the cellular telephone number we have marked under section 552.1175 of the Government Code as long as the cellular telephone service is not paid for by a governmental body. However, if the agent is not a criminal investigator of the United States as described by article 2.122(a) or if he does not elect to restrict access to his information in accordance with section 552.1175(b), then the district attorney's office may not withhold this information under section 552.1175.

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 id.* § 552.130. Accordingly, the district attorney's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the district attorney's office must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, the district attorney's office must withhold the public citizens' dates of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the agent at issue is a criminal investigator of the United States as described by article 2.122(a) of the Code of Criminal Procedure and elects to restrict access to his information in accordance with section 552.1175(b), then the district attorney's office must withhold the cellular telephone number we have marked under section 552.1175 of the Government Code as long as the cellular telephone service is not paid for by a governmental body. The district attorney's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The district attorney's office must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The district attorney's office must release the remaining information pursuant to section 552.022(a)(1) of the Government Code.<sup>2</sup>

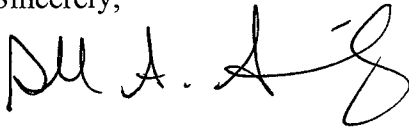
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<sup>2</sup> We note the requestor has a right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground 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, if the district attorney's office receives another request for the same information from a different requestor, the district attorney's office must again seek a decision from this office.

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,

A handwritten signature in black ink, appearing to read "Gerald Arismendez". The signature is fluid and cursive, with a large, stylized "G" at the end.

Gerald Arismendez  
Assistant Attorney General  
Open Records Division

GAA/gw

Ref: ID# 798599

Enc. Submitted documents

c: Requestor  
(w/o enclosures)