



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

January 13, 2020

Mr. Wes Mau  
Criminal District Attorney  
Hays County  
712 South Stagecoach Trail, Suite 2057  
San Marcos, Texas 78666

OR2020-01238

Dear Mr. Mau:

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# 805843 (ORR# 19-0860).

The Hays County District Attorney's Office (the "district attorney's office") received a request for information related to case number HCSO-1955384. The district attorney's office claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the district attorney's office claims and reviewed the submitted information.

Initially, we must address the procedural obligations of the district attorney's office under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). The district attorney's office received the request for information on October 11, 2019. The district attorney's office does not inform us it was closed for any business days between October 11, 2019, and October 25, 2019. Accordingly, the district attorney's office was required to provide the information required by section 552.301(b) by October 25, 2019. However, the envelope in which the district attorney's office sent the information required by section 552.301(b) was postmarked October 30, 2019. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the district attorney's office failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). Because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these exceptions to the submitted information.<sup>1</sup> However, we find the district attorney's office has failed to establish a compelling reason to address its claimed exception.

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 all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with 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 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 district attorney's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

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

---

<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).

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 "Claire V. Morris Sloan". The signature is fluid and cursive, with the first name "Claire" being the most prominent.

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/gw

Ref: ID# 805843

Enc. Submitted documents

c: Requestor  
(w/o enclosures)