



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 5, 2020

Ms. Mary E. Miller
Assistant District Attorney
Denton County Sheriff's Office
127 North Woodrow Lane, Suite 300
Denton, Texas 76205

OR2020-03380

Dear Ms. Miller:

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# 810249 (ORR# S002729-110519).

The Denton County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident. You state you have released some information. You state you do not have information responsive to a portion of the request.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the sheriff's office's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). In this instance, the sheriff's office received the request for information on November 5, 2019. We note the sheriff's office was closed on November 11, 2019. This office does not count the date the request was received or holidays for the purpose of calculating a government body's

¹ The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

deadline under the Act. Accordingly, the sheriff's office's ten-business-day deadline was November 20, 2019. Thus, the sheriff's office was required to provide the information required by section 552.301(b) by November 20, 2019. However, the sheriff's office submitted the information required by section 552.301(b) in an envelope bearing a post-office mark of November 21, 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). Consequently, we conclude the sheriff's office failed to comply with the procedural requirements mandated by section 552.301(b) 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, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). You claim sections 552.101, 552.108, and 552.130 of the Government Code for the submitted information. 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 information at issue. However, we find you failed to establish a compelling reason to address your remaining claimed exception.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we agree some of the submitted video recordings and the documents contain motor vehicle record information subject to section 552.130. You state the sheriff's office does not have the technological capability to redact the motor vehicle record information from the video recordings at issue. Accordingly, the sheriff's office must withhold the motor vehicle record information you marked and the video recordings we indicated in their entireties under section 552.130 of the Government Code.² *See* Open Records Decision No. 364 (1983). However, we find the remaining video recordings do not contain information subject to section 552.130. Thus, the sheriff's office may not withhold any portion of the remaining video recordings under section 552.130 of the Government Code.

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

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

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.).

Upon review, we find some of the remaining information contains public citizens' dates of birth that are subject to section 552.101 of the Government Code in conjunction with common-law privacy. You contend the sheriff's office does not have the technological capability to redact the dates of birth from the audio recordings at issue. However, because the sheriff's office had the ability to copy the submitted audio recordings for our review, we believe the sheriff's office has the capability to produce a copy of only the non-confidential portions of the audio recordings. Accordingly, the sheriff's office must withhold all of the public citizens' dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the sheriff's office must withhold the motor vehicle record information you marked and the video recordings we indicated in their entireties under section 552.130 of the Government Code. The sheriff's office must withhold all of the public citizens' dates of birth in the remaining information 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,



D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/be

Ref: ID# 810249

Enc. Submitted documents

c: Requestor
(w/o enclosures)