



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

February 10, 2020

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

OR2020-03835

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# 810828 (ORR# 19PIA0848).

The Office of the Harris County Constable, Precinct 5 (the "constable's office") received a request for a specified incident report. The constable's office claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

The submitted information concerns an alleged violation of section 32.51 of the Penal Code. Section 32.51(b)(1) provides "[a] person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses an item of . . . identifying information of another person without the other person's consent or effective consent[.]" Penal Code § 32.51(b). Article 2.29 of the Code of Criminal Procedure pertains to alleged violations of section 32.51 that occurred on or after September 1, 2005, and provides as follows:

- (a) A peace officer to whom an alleged violation of Section 32.51, Penal Code, is reported shall make a written report to the law enforcement

agency that employs the peace officer that includes the following information:

- (1) the name of the victim;
- (2) the name of the suspect, if known;
- (3) the type of identifying information obtained, possessed, transferred, or used in violation of Section 32.51, Penal Code; and
- (4) the results of any investigation.

(b) On the victim's request, the law enforcement agency shall provide the report created under Subsection (a) to the victim. In providing the report, the law enforcement agency shall redact any otherwise confidential information that is included in the report, other than the information described by Subsection (a).

Crim. Proc. Code art. 2.29. For purposes of article 2.29, an offense is committed on or after September 1, 2005, if no "element of the offense occurs before that date." Act of Jun. 17, 2005, 79th Leg., R.S., ch. 294, § 1(b), 2005 Tex. Gen. Laws 885. The requestor is the victim and the alleged offense occurred after September 1, 2005. Therefore, the information at issue is subject to article 2.29 of the Code of Criminal Procedure and must be released to the requestor, except to the extent the information is confidential. Crim. Proc. Code art. 2.29(b). Section 552.108 of the Government Code does not make information confidential. See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Thus, the constable's office may not withhold the submitted information from this requestor under section 552.108 of the Government Code. However, because sections 552.101, 552.130, and 552.137 of the Government Code are confidentiality provisions, we will address their applicability to this information.<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

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<sup>1</sup> The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

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.). the constable's office must withhold the suspect's date 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. Because section 552.130 protects personal privacy, the requestor has a right of access to his own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. However, the constable's office must withhold the driver's license number and issuing state of the suspect 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 Gov't Code* § 552.137(a)-(c). The requestor has a right of access to his own e-mail address pursuant to section 552.137(b) of the Government Code. *See Gov't Code* § 552.137(b). However, the suspect's e-mail address does not appear to be of a type specifically excluded by section 552.137(c). The constable's office does not inform us a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the constable's office must withhold the suspect's e-mail address under section 552.137 of the Government Code.

In summary, the constable's office must withhold the suspect's date of birth under section 552.101 of the Government Code in conjunction with common-law privacy, driver's license number and issuing state under section 552.130 of the Government Code, and e-mail address under section 552.137 of the Government Code. The constable's office must release the remaining information.<sup>2</sup>

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.

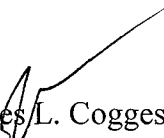
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and

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<sup>2</sup> Because the requestor has a special right of access to some of the information being released, the constable's office must again seek a decision from this office if it receives another request for the same information from another requestor.

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/jxd

Ref: ID# 810828

Enc. Submitted documents

c: Requestor  
(w/o enclosures)