March 17, 2020

Mr. Adam Bitter
General Counsel
The Office of the Texas Secretary of State
P.O. Box 12697
Austin, Texas 78711-2697

Dear Mr. Bitter:

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# 816898 (SOS PIR# 19-1223).

The Office of the Texas Secretary of State (the "secretary’s office") received a request for the individual filings of all people who filed to run as independents in a specified election. You state the secretary’s office has redacted personal e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009). You also state the secretary’s office has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note the submitted information is subject to section 1.012 of the Election Code, which provides as follows:

(a) Subject to Subsection (b), an election record that is public information shall be made available to the public during the regular business hours of the record’s custodian.

---

1 Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. See ORD 684.
(c) Except as otherwise provided by this code or [the Act], all election records are public information.

(d) In this code, "election record" includes:

(1) anything distributed or received by government under this code;

...  

(3) a certificate, application, notice, report, or other document or paper issued or received by government under this code.

Elec. Code § 1.012(a), (c), (d)(1), (d)(3). A declaration of intent must be filed by a candidate in order to run as an independent candidate in a general election. Id. § 142.002(a). Thus, a declaration of intent is "received by government under [the election code]." Id. § 1.012 (d)(1), (d)(3). Therefore, under section 1.012(a), the submitted information must be made available to the public, except as provided by the Act. Accordingly, we will address the arguments submitted by the secretary’s office against disclosure.

Section 552.101 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 court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. 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 secretary’s office must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions to disclosure, the secretary’s office must release the remaining information.

You also ask this office to issue a previous determination permitting the secretary’s office to withhold dates of birth in declarations of intent and other candidate applications and forms filed with, or otherwise maintained by, the secretary’s office under section 552.101 of the Government Code in conjunction with common-law privacy without seeking a ruling from this office. See Gov’t Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). After due consideration, we have decided to grant your request on this matter. Therefore, this letter ruling authorizes the secretary’s office to withhold public citizens’ dates of birth from declarations of intent and other candidate applications and forms filed with, or otherwise maintained by, the secretary’s office under section 552.101 of the Government Code in conjunction with common-law privacy. We note common-law privacy is a personal right that lapses at an individual’s death. See Moore v. Charles B.
Pierce Film Enters., Inc., 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); see also Open Records Decision Nos. 620 (1993), 272 (1981), 192 (1978). Therefore, this previous determination authorizes the secretary’s office to withhold dates of birth of living individuals. This previous determination is not applicable to dates of birth belonging to deceased individuals. We also note a person or a person’s authorized representative has a special right of access under section 552.023 of the Government Code to information that is protected from public disclosure by laws intended to protect the person’s privacy interests. See Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, this previous determination is not applicable to dates of birth requested by a person or the authorized representative of a person whose date of birth is at issue. Furthermore, information filed with a court is not protected by common-law privacy. See Gov’t Code § 552.022(a)(17); Star-Telegram v. Walker, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Accordingly, this previous determination is not applicable to dates of birth contained in court-filed documents. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the secretary’s office need not ask for a decision from this office again with respect to this type of information. See ORD 673 at 7-8 (listing elements of second type of previous determination under Gov’t Code § 552.301(a)).

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,

Emily Kunst
Assistant Attorney General
Open Records Division

EK/be

Ref:  ID# 816898

c: Requestor