



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 27, 2020

Ms. T. Tricia Dang
Assistant City Attorney
City of Sugar Land
2700 Town Center Boulevard North
Sugar Land, Texas 77479-0110

OR2020-18666

Dear Ms. Dang:

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# 836596 (ORR# W009505).

The Sugar Land Police Department (the "department") received a request for report number 18-4327. The department claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the department claims and reviewed the submitted information.

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 section 411.153(a) of the Government Code, which provides "[a] DNA record stored in the DNA database is confidential and is not subject to disclosure under the [Act]." *Id.* § 411.153(a). A "DNA record" means the results of a forensic DNA analysis performed by a DNA laboratory. *See id.* § 411.141(6)-(7). "Forensic analysis" is defined as "a medical, chemical, toxicologic, ballistic, or other expert examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action." Crim. Proc. Code art. 38.35(4); *see also* Gov't Code § 411.141(10) ("forensic analysis" has meaning assigned by article 38.35). A "DNA database" means "one or more databases that contain forensic DNA records maintained by the director of [the Department of Public Safety ("DPS)]." Gov't Code § 411.141(5); *see id.* § 411.001(3).

The director of DPS is required to establish certain procedures for DNA laboratories. *See id.* §§ 411.142(h) (requiring director establish standards for DNA analysis), .144(a).

Section 411.144 of the Government Code provides a DNA laboratory conducting a forensic DNA analysis under subchapter G of chapter 411 must comply with subchapter G and the rules adopted under subchapter G. *See id.* § 411.144(d); 37 T.A.C. §§ 28.91, .92 (describing minimum standards by which forensic DNA laboratory must abide); *see also* Gov't Code § 411.147(b).

Upon review, we find some of the information that the department has marked consists of records relating to DNA analyses of samples collected under subchapter G of chapter 411 of the Government Code. We further note this information is the result of forensic DNA analyses performed by a DNA laboratory in accordance with DPS regulations. Therefore, the department must withhold the information at issue, which we marked, under section 552.101 of the Government Code in conjunction with section 411.153(a) of the Government Code. *See City of Fort Worth v. Abbott*, 258 S.W.3d 320, 328 (Tex. App.—Austin 2008, no pet.) (section 411.153 prohibits release of DNA records held by city forensic science laboratory regardless of whether records have been forwarded to DPS state DNA database). However, we find the department has not demonstrated the applicability of section 411.153 to any of the remaining information it marked, and the department may not withhold any of the remaining information under section 552.101 on that basis.

Section 552.101 of the Government Code also 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 department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining information is subject to section 552.130 of the Government Code.¹ Section 552.130 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 department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.153(a) of the Government Code. The department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The department must release the remaining information.

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/mo

Ref: ID# 838596

Enc. Submitted documents

c: Requestor
(w/o enclosures)