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ATTORNEY GENERAL OF TEXAS

August 21, 2020

Ms. Lindsey K. Rattikin  
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Southern Methodist University  
P.O. Box 750132  
Dallas, Texas 75275-0132

OR2020-21115

Dear Ms. Rattikin:

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# 841451.

The Southern Methodist University Police Department (the "department") received a request for information pertaining to a specified incident. The department claims the submitted information is either not subject to the Act or excepted from disclosure under sections 552.101 and 552.147 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Section 51.212(f) of the Education Code reads as follows:

A campus police department of a private institution of higher education is a law enforcement agency and a governmental body for purposes of [the Act], only with respect to information relating solely to law enforcement activities.

Educ. Code § 51.212(f). We understand the department is a campus police department of a private institution of higher education. *See id.* §§ 51.212(e), 61.003. Thus, the department is a governmental body for purposes of the Act, and information maintained by the department is subject to disclosure under the Act, to the extent such information relates solely to law enforcement activities. Upon review, we find the department has failed to establish the submitted information does not relate solely to law enforcement activities. *See* Educ. Code §§ 51.212(e), 61.003. Therefore, we will consider the department's arguments against disclosure of this information under the Act.

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.). We agree the department must withhold the dates of birth it has marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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).<sup>1</sup> *See* Gov’t Code § 552.137(a)-(c). The remaining information contains an e-mail address of a member of the public. The e-mail address does not appear to be of a type specifically excluded by section 552.137(c), and the department does not inform us a member of the public has affirmatively consented to its release. Therefore, the department must withhold the e-mail address of a member of the public in the remaining information under section 552.137 of the Government Code.

Section 552.147(a) of the Government Code provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147(a). The department may withhold the social security numbers it has marked under section 552.147 of the Government Code.<sup>2</sup>

In summary, the department must withhold the dates of birth it has marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the e-mail address of a member of the public in the remaining information under section 552.137 of the Government Code. The department may withhold the social security numbers it has marked under section 552.147 of the Government Code. The department must release the remaining information.<sup>3</sup>

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

<sup>2</sup> We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. Gov’t Code § 552.147(b).

<sup>3</sup> Because the requestor has a special right of access to some of the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

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,

James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/be

Ref: ID# 841451

Enc. Submitted documents

c: Requestor  
(w/o enclosures)