



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 2, 2020

Ms. Laurie K. English
District Attorney
Sutton County
400 South Nelson
Fort Stockton, Texas 79735-7133

OR2020-22082

Dear Ms. English:

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# 842399.

The 112th Judicial District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified prosecution.¹ The district attorney'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.

Initially, we must address the procedural obligations of the district attorney's office under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. 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. Gov't Code § 552.301(b). Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving a request for information (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to

¹ As the district attorney's office has not submitted a copy of the request for information, we take our description from its brief.

indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). As of the date of this ruling, the district attorney's office has not submitted either a signed statement or sufficient evidence showing when it received the written request for information, or a copy of the written request for information. *See id.* Therefore, the district attorney's office failed to comply with section 552.301(e).

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 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). Because sections 552.101, 552.130, and 552.136 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these sections to the information at issue.² However, we find the district attorney's office has failed to establish a compelling reason to address section 552.108 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 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 district attorney's office must withhold the submitted 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. The district attorney's office must withhold the submitted driver's license number and issuing state under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b). The district attorney's office must withhold the submitted bank account and routing numbers under section 552.136 of the Government Code.

The district attorney's office must withhold the following: (1) the submitted date of birth under section 552.101 of the Government Code in conjunction with common-law privacy;

² 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).

(2) the submitted driver's license number and issuing state under section 552.130 of the Government Code; and (3) the submitted bank account and routing numbers under section 552.136 of the Government Code. The district attorney'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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jxd

Ref: ID# 842399

Enc. Submitted documents

c: Requestor
(w/o enclosures)