



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 9, 2020

Mr. Robert Spangler
Counsel for Jim Wells County Sheriff's Office
Royston Rayzor Vickery & Williams L.L.P.
802 North Carancahua Street, Suite 1300
Corpus Christi, Texas 78401

OR2020-28076

Dear Mr. Spangler:

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# 852844 (Ref. No. 46,769)

The Jim Wells County Sheriff's Office (the "sheriff's office"), which you represent, received a request for information related to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Next, we must address the requestor's contention the sheriff's office failed to comply with the procedural requirements of the Act. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public release. Pursuant to section 552.301(b), the governmental body must ask for the attorney's general decision and state the exceptions that apply within ten business days after receiving the request. *See id.* § 552.301(b). Further, pursuant to section 552.301(d), the governmental body must provide the requestor, within ten business days after the date of its receipt of the request for information, a statement the governmental body has asked for a decision from the attorney general and a copy of the governmental body's written communication to the attorney general asking for a decision. *See id.* § 552.301(d). The determination of whether a governmental body mailed copies of the correspondence at issue to the requestor is a question of fact. This office cannot resolve disputes of fact in its decisional process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a

fact issue cannot be resolved as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. ORD 552 at 4. The sheriff's office submits documentation showing it received the request for information after business hours on August 20, 2020. Therefore, for purposes of section 552.301, the sheriff's office received the request for information on August 21, 2020. The sheriff's office does not inform us it was closed for any business days between August 21, 2020 and September 4, 2020. Accordingly, the sheriff's office's ten-business-day deadline was September 4, 2020. The envelope in which the sheriff's office mailed its correspondence to this office under section 552.301(b) is postmarked September 2, 2020. *See* Gov't Code § 552.308(a) (describing rules for calculating submission dates of documents sent via first class mail, common or contract carrier, or interagency mail). The brief of the sheriff's office reflects the sheriff's office sent a copy of its correspondence to the requestor concurrently with the timely mailing to this office. Consequently, based upon the correspondence of the sheriff's office, we find the sheriff's office complied with section 552.301 of the Government Code in requesting this ruling. Therefore, we will address the submitted argument against disclosure of the submitted responsive information.

The sheriff's office asserts the dates of birth are excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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.). Thus, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the sheriff's office has failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the sheriff's office may not withhold the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). After review of the remaining information at issue, we find the sheriff's office has

not demonstrated any portion of the remaining information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the sheriff's office may not withhold any of the remaining information at issue under section 552.101 on the basis of constitutional 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.* Upon review, we find portions of the remaining information consist of motor vehicle record information. We note section 552.130 protects personal privacy. Accordingly, the sheriff's office must withhold the motor vehicle record information we marked and indicated under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the motor vehicle record information we marked and indicated under section 552.130 of the Government Code. The sheriff'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,

Sean McCormick
Assistant Attorney General
Open Records Division

SMC/jm

Ref: ID# 852844

Enc. Submitted documents

c: Requestor
(w/o enclosures)