



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 20, 2020

Mr. Carlos G. Madrid
Assistant County Attorney
El Paso County Attorney's Office
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2020-29197

Dear Mr. Madrid:

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# 854593 (Ref. No. 0513-20-PI).

The El Paso County Sheriff's Office (the "sheriff's office") received a request for a specified case report. You state you have released some of the information to the requestor with redactions pursuant to section 552.147(b) of the Government Code and Open Records Letter No. 2016-11881 (2016).¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim 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. This section encompasses information protected by other statutes, such as section 1703.306 of the Occupations Code, which provides:

- (a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

¹ 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. *See* Gov't Code § 552.147(b). Open Records Letter No. 2016-11881 authorizes the sheriff's office to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

Occ. Code § 1703.306(a), (b). Attachment C contains information acquired from polygraph examinations. The requestor does not fall within any of the categories of individuals who have a right of access to the submitted polygraph information under section 1703.306(a). Accordingly, the sheriff's office must withhold Attachment C under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

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 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 sheriff's office must withhold all public citizens' dates 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. Accordingly, the sheriff's office must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold Attachment C under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. The sheriff's office must withhold all public citizens' dates of birth 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 you have marked 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,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/be

Ref: ID# 854593

Enc. Submitted documents

c: Requestor
(w/o enclosures)