



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 5, 2022

Ms. LaNetra S. Lary
Assistant County Attorney
Fort Bend County Sheriff's Office
401 Jackson Street, Third Floor
Richmond, Texas 77469

OR2022-00270

Dear Ms. Lary:

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# 923579.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

The submitted information concerns an alleged violation of section 32.51 of the Penal Code. Section 32.51(b)(1) provides "[a] person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses an item of . . . identifying information of another person without the other person's consent or effective consent[.]" Penal Code § 32.51(b). Article 2.29 of the Code of Criminal Procedure pertains to alleged violations of section 32.51 that occurred on or after September 1, 2005, and provides as follows:

- (a) A peace officer to whom an alleged violation of Section 32.51, Penal Code, is reported shall make a written report to the law enforcement agency that employs the peace officer that includes the following information:

¹ We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

- (1) the name of the victim;
- (2) the name of the suspect, if known;
- (3) the type of identifying information obtained, possessed, transferred, or used in violation of Section 32.51, Penal Code; and
- (4) the results of any investigation.

(b) On the victim's request, the law enforcement agency shall provide the report created under Subsection (a) to the victim. In providing the report, the law enforcement agency shall redact any otherwise confidential information that is included in the report, other than the information described by Subsection (a).

Crim. Proc. Code art. 2.29. For purposes of article 2.29, an offense is committed on or after September 1, 2005, if no "element of the offense occurs before that date." Act of Jun. 17, 2005, 79th Leg., R.S., ch. 294, § 1(b). The requestor is one of the victims and the alleged offense occurred after September 1, 2005. Therefore, the information at issue is subject to article 2.29 of the Code of Criminal Procedure and must be released to the requestor, except to the extent the information is confidential. Crim. Proc. Code art. 2.29(b). Section 552.108 of the Government Code does not make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Thus, the sheriff's office may not withhold the information subject to article 2.29 from this requestor under section 552.108 of the Government Code. However, because sections 552.101, 552.130, 552.136, and 552.137 of the Government Code make information confidential under the Act, we will address their applicability to this information.²

Section 552.101 of the Government Code excepts "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, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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.). This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or

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).

embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy).

Upon review, we find the remaining information includes dates of birth of public citizens. However, we note the information at issue consists of the dates of birth of the requestor and her spouse. Section 552.023(a) of the Government Code states that a person or a person's authorized representative has a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, the requestor has a right of access to her date of birth as well as her spouse's date of birth if she is acting as her spouse's authorized representative. Therefore, the sheriff's office may not withhold the requestor's own date of birth from her under common-law privacy. Furthermore, if the requestor is acting as her spouse's authorized representative, then the sheriff's office may not withhold her spouse's date of birth under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as her spouse's authorized representative, then the city must withhold his date of birth under section 552.101 in conjunction with common-law privacy. Further, we note the remaining information you marked pertains to the requestor. As mentioned above, the requestor has a right of access to information pertaining to herself that would otherwise be confidential under common-law privacy. *See* Gov't Code § 552.023(a); ORD 481 at 4 (1987). Accordingly, the sheriff's office may not withhold the remaining information at issue under section 552.101 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. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to her own motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from her under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. The remaining information at issue consists of motor vehicle record information belonging to the requestor's spouse. Thus, if the requestor is acting as her spouse's authorized representative under section 552.023 of the Government Code, the information at issue may not be withheld under section 552.130 of the Government Code. To the extent the requestor is not acting as her spouse's authorized representative, the sheriff's must withhold the remaining information at issue under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code provides, "[notwithstanding any other provision of [the Act], 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." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). We note, because section 552.136 protects privacy interests, the requestor has a right of access to her own information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Further, we find the sheriff's office has not demonstrated any portion of the remaining information consists of access device numbers for purposes of

section 552.136. Accordingly, the sheriff's office may not withhold any portion of the remaining information under section 552.136 of the Government Code.

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). *See* Gov't Code § 552.137(a)-(c). Upon review, we find the e-mail address we marked is generally confidential under section 552.137 of the Government Code. We note, however, the requestor is the spouse of the individual whose e-mail address is at issue, and may be acting as his authorized representative. Therefore, the requestor may have a right of access to her spouse's e-mail address pursuant to section 552.137(b) of the Government Code. *See id.* § 552.137(b). Accordingly, if the requestor is acting as her spouse's authorized representative, then the requestor has a right of access to her spouse's e-mail address, and that information may not be withheld from this requestor under section 552.137 of the Government Code. If the requestor is not acting as her spouse's authorized representative, then the sheriff's office must withhold the e-mail address we marked under section 552.137 of the Government Code.

In summary, if the requestor is not acting as the authorized representative of her spouse, then the sheriff's office must (1) withhold the date of birth of the requestor's spouse under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the motor vehicle record information you marked pertaining to the requestor's spouse under section 552.130 of the Government Code; (3) withhold the e-mail address we marked under section 552.137 of the Government Code; and (4) release the remaining information. If the requestor is acting as the authorized representative of her spouse, then the sheriff's office must release the submitted information in its entirety.

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,

Meagan Hunter
Assistant Attorney General
Open Records Division

MH/ba

Ref: ID# 923579

Enc. Submitted documents

c: Requestor
(w/o enclosures)