



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 12, 2022

Ms. Diana Shearer  
Assistant County Attorney  
El Paso County  
500 East San Antonio, Room 503  
El Paso, Texas 79901

OR2022-01157

Dear Ms. Shearer:

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# 926081 (ORR# 0031-22-PI).

The El Paso County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified arrest. The sheriff's office claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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 chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code makes CHRI the Texas Department of Public Safety ("DPS") maintains confidential, except DPS may disseminate this information as provided in subchapters E-1 and F of chapter 411 of the Government Code. *See* Gov't Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.083(b)(1), .089. The submitted information contains a Federal Bureau of Investigation ("FBI")

number that constitutes CHRI generated by the FBI. Therefore, the sheriff's office must withhold the submitted FBI number under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. However, section 411.083 is not applicable to the Department of Public Safety ("DPS") number that the sheriff's office has marked. Thus, the sheriff's office may not withhold the DPS number under section 552.101 on that ground.

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.). The sheriff'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.<sup>1</sup> *See Gov't Code* § 552.130. The sheriff's office must withhold the submitted driver's license number and issuing state under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold the following: (1) the submitted FBI number under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; (2) the submitted date of birth under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the submitted driver's license number and issuing state under section 552.130 of the Government Code. The sheriff's office must release the remaining information.<sup>2</sup>

Finally, the sheriff's office asks this office to issue a previous determination permitting it to withhold FBI numbers under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code without requesting a ruling from this office. *See Gov't Code* § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). However, we decline to do so at this time. Accordingly, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us. Therefore, this ruling must

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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 the information at issue contains a social security number. 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).

not be relied upon as a previous determination regarding any other records 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/ba

Ref: ID# 926081

Enc. Submitted documents

c: Requestor  
(w/o enclosures)