



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 21, 2022

Ms. Priscilla de Mata  
Counsel for the Canutillo Independent School District  
Blanco Ordonez Mata & Wechsler, P.C.  
5715 Cromo Drive  
El Paso, Texas 79912

OR2022-08109

Dear Ms. Mata:

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# 937858 (ORR# R000187).

The Canutillo Independent School District (the "district") received a request for a specified incident report. The district claims the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the claimed exceptions 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. 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 the *Industrial Foundation* decision. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). 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 cites to *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), in support of its argument under common-law privacy for the remaining information. In the *Ellen* decision, the court addressed the applicability of the common-law privacy doctrine to files of an investigation of sexual harassment. However, we note the ruling in *Ellen* was applicable to investigations involving workplace harassment. The submitted information consists of law enforcement records. Upon review, we find the submitted information does not constitute a sexual harassment investigation in the employment context of the district for purposes of the *Ellen* decision. Accordingly, the common-law privacy protection under the *Ellen* decision is not applicable to the submitted information. Nevertheless, the district must withhold the submitted dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. We also find some of the remaining information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the district must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining information is not confidential under common-law privacy, and the district may not withhold it under section 552.101 on that ground.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). We note section 552.117 applies only to information that a governmental body holds in an employment context. As noted above, the district does not maintain the submitted information in an employment capacity. Accordingly, the district may not withhold any of the remaining information under section 552.117(a)(1) of the Government Code.

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 district must withhold the submitted driver's license, license plate, and vehicle identification numbers and issuing states under section 552.130 of the Government Code.

In summary, the district must withhold the submitted dates of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district must also withhold the submitted driver's license, license plate, and vehicle identification numbers and issuing states under section 552.130 of the Government Code. The district must release the remaining information.<sup>2</sup>

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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 social security numbers. 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).

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/BA

Ref: ID# 937858

Enc. Submitted documents

c: Requestor  
(w/o enclosures)