



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 24, 2022

Ms. Leigh Ann Tognetti
Assistant District Attorney
Hidalgo County
100 East Cano Street
Edinburg, Texas 78539

OR2022-14947

Dear Ms. Tognetti:

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# 949847 (ORR# 2022-029-DA.CO).

The Hidalgo County Elections Administration Office (the "county") received a request for specified communications.¹ You state you have released some information. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

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 section 32.076 of the Election Code, which provides as follows:

(a) Except as provided by Subsection (b), an e-mail address or personal phone number of an election judge or clerk collected or maintained by the authority conducting the election is confidential and does not constitute public information for purposes of [the Act],

¹ We note the requestor modified his original request.

² 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.

(b) An e-mail address or phone number described by Subsection (a) shall be made available on request to:

(1) any entity eligible to submit lists of election judges or clerks for that election; or

(2) the state executive committee of a political party with a county chair eligible to submit lists of election judges or clerks for that election.

Elec. Code § 32.076. Upon review, we find the submitted information contains e-mail addresses and personal phone numbers of election judges or clerks collected or maintained by the authority conducting the election. Further, we find none of the exceptions in section 32.076(b) apply in this instance. Therefore, the county must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 32.076 of the Election Code.

We note some of the remaining information is subject to section 552.130 of the Government Code.³ 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 county must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.⁴

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 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 county must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the county must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 32.076 of the Election Code. The county must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The county must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

³ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

⁴ As our ruling is dispositive, we need not address the remaining argument against disclosure of this 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,

Colin Henry
Attorney
Open Records Division

CEH/be

Ref: ID# 949847

Enc. Submitted documents

c: Requestor
(w/o enclosures)