



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 19, 2022

Ms. LaNetra S. Lary  
Assistant County Attorney  
Fort Bend County  
401 Jackson Street, 3rd Floor  
Richmond, Texas 77469

OR2022-24860

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# 966890 (Ref. #0716).

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident involving the requestor's client. 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.<sup>1</sup>

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The sheriff's office raises section 552.108(a)(2) and states the information relates to a case that is "inactive", but the sheriff's office will pursue any evidence or information that develops should the complainant decide to proceed. The sheriff's office further states the information relates to crimes that did not result in a conviction or deferred adjudication. In addition, the sheriff's office informs us the state of limitations has not yet expired. Thus, we understand the sheriff's office to consider this

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<sup>1</sup> 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 that those records contain substantially different types of information than that submitted to this office.

file regarding the investigation of criminal charges that did not result in a conviction or deferred adjudication to be unresolved and subject to subsequent action. We note section 552.108(a)(2) is applicable only if the information at issue is related to a concluded criminal case that did not result in conviction or deferred adjudication. Upon review, we find the sheriff's office has failed to demonstrate the applicability of section 552.108(a)(2) to the information at issue. Therefore, the sheriff's office may not withhold any of the information at issue under section 552.108(a)(2) of the Government Code.

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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the doctrine of the common-law 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.). We note the requestor has a right of access to her client's date of birth pursuant to section 552.023 of the Government Code. *See Gov't Code § 552.023(a)* (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, the sheriff's office may not withhold the public citizen's date of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from public disclosure 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. *See Gov't Code § 552.130*. We note section 552.130 protects personal privacy. Therefore, the requestor has a right of access to her client's motor vehicle record information pursuant to section 552.023 and it may not be withheld from her under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, with the exception of the motor vehicle record information pertaining to the requestor, the sheriff's office must withhold the motor vehicle record information you marked and the additional information we marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "[n]otwithstanding 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). Section 552.136(a) defines "access device" as "a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a). Upon

review, we find the sheriff's office has not demonstrated the remaining information at issue consists of access device numbers for purposes of section 552.136. Accordingly, the sheriff's office may not withhold any of the remaining information at issue under section 552.136 of the Government Code.

In summary, with the exception of the motor vehicle record information pertaining to the requestor, the sheriff's office must withhold the motor vehicle record information you marked and the additional information we 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,

Kimbell Kesling  
Assistant Attorney General  
Open Records Division

KK/mo

Ref: ID# 966890

Enc. Submitted documents

c: Requestor  
(w/o enclosures)