



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 13, 2022

Ms. Melanie Bybee
Administrative Assistant
Somervell County Sheriff's Office
P.O. Box 3268
Glen Rose, Texas 76043

OR2022-31435

Dear Ms. Bybee:

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# 978288.

The Somervell County Sheriff's Office (the "sheriff's office") received a request for a specified police report. You state the sheriff's office will release some information. You inform us the sheriff's office will redact social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim some of the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information at issue pertains to a concluded

¹ 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).

² Although you do not cite to section 552.130 of the Government Code in your brief to this office, we understand you to raise this section based on your markings.

investigation that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to the information at issue. Thus, the sheriff's office may withhold the information it marked 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."³ *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. *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 requestors have a right of access to their own dates of birth under section 552.023 of the Government Code and it may not be withheld from them under section 552.101 in conjunction with common-law privacy. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, with the exception of the requestors' dates of birth, the sheriff's office must withhold all public citizens' dates 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 or 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. Gov't Code § 552.130(a). Upon review, we find the sheriff's office must withhold the motor vehicle record information it marked as well as the information we have marked under section 552.130 of the Government Code.

In summary, the sheriff's office may withhold the information it marked under section 552.108(a)(2) of the Government Code. With the exception of the requestors' dates of birth, the sheriff's office must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the motor vehicle record information it marked as well as the information we have 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.

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).

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,

Kelly McWethy
Assistant Attorney General
Open Records Division

KM/jxd

Ref: ID# 978288

Enc. Submitted documents

c: Requestor
(w/o enclosures)