



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 19, 2022

Mr. Naved Qazi
Assistant District Attorney
Dallas County District Attorney's Office
500 Elm Street-Suite 6300
Dallas, Texas 75202-3329

OR2022-32287

Dear Mr. Qazi:

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# 978805 (GovQA D006240-072222).

Dallas County (the "county") received a request for specified e-mails during a particular timeframe.¹ You claim 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 information. We have also received and considered comments from an interested third party. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 of the Government Code encompasses section 1202 of title 8 of the United States Code. Section 1202 provides in part:

¹ You state the county sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

(f) Confidential nature of records

The records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States shall be considered confidential[.]

8 U.S.C. § 1202(f). You contend the information pertaining to the immigration status of certain individuals is confidential under section 1202(f). However, we note the information at issue is maintained by the county. You have not explained how or why information held by the county would qualify as a record of the Department of State or of a diplomatic or consular office of the United States for the purposes of section 1202(f). *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Therefore, as you have not demonstrated the information in question falls within the scope of the federal statute, the county may not withhold the information at issue under section 552.101 of the Government Code in conjunction with section 1202 of title 8 of the United States Code. *See also Medina-Hincapie v. Dep't of State*, 700 F.2d 737, 741 (D.C. Cir. 1983) (“Under section [1202(f)] the Secretary of State has no authority to disclose material to the public.”); *Perry-Torres v. U.S. Dep't of State*, 404 F. Supp. 2d 140, 143-44 (D.D.C. 2005) (Department of State properly withheld information relating to denial of visa application under 8 U.S.C. § 1202(f)); *Church of Scientology of Cal. v. Dep't of State*, 493 F. Supp. 418, 423 (D.D.C. 1980) (8 U.S.C. § 1202(f) applicable to document described as “permanent record of State Department”).

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 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.). Accordingly, the county must withhold the date of birth we marked under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code.² *See* Gov't Code § 552.117(a)(1). Section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 of the Government Code not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use).

² The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Accordingly, if the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and a governmental body does not pay for the cellular telephone service, the county must withhold the cellular telephone number we marked under section 552.117(a)(1) of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses at issue do not appear to be the type specifically excluded by subsection (c). Upon review, we find the county must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the county must withhold the date of birth we marked under section 552.101 in conjunction with common-law privacy. If the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and a governmental body does not pay for the cellular telephone service, the county must withhold the cellular telephone number we marked under section 552.117(a)(1) of the Government Code. The county must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The county must release the remaining information.³

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

³ We note the 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).

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,

Chase D. Young
Assistant Attorney General
Open Records Division

CDY/pt

Ref: ID# 978805

Enc. Submitted documents

c: Requestor