



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 9, 2016

Ms. Lindsey Wolf  
General Counsel  
Office of the Secretary of State  
P.O. Box 12697  
Austin, Texas 78711-2697

OR2016-05459

Dear Ms. Wolf:

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# 602418.

The Office of the Secretary of State (the "secretary's office") received a request for "all information submitted by candidates on their Application for Nomination, including e-mail addresses and telephone numbers."<sup>1</sup> The secretary's office states it has released some of the requested information, but claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, you inform us the submitted information is subject to section 1.012 of the Election Code, which provides, in relevant part, the following:

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<sup>1</sup>The secretary's office sought and received clarification of the information requested. *See* Gov't Code § 552.222 (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) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

<sup>2</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 those records contain substantially different types of information than that submitted to this office.

(a) Subject to Subsection (b), an election record that is public information shall be made available to the public during the regular business hours of the record's custodian.

...

(c) Except as otherwise provided by [the Election Code] or [the Act], all election records are public information.

(d) In this code, "election record" includes:

...

(3) a certificate, application, notice, report, or other document or paper issued or received by government under this code.

Elec. Code § 1.012(a), (c), (d)(3). In addition, section 141.035 of the Election Code provides, "[a]n application for a place on [an election] ballot . . . is public information immediately on its filing." *Id.* § 141.035. Therefore, under section 1.012(a), the secretary's office must make the submitted information available to the public, except as provided by the Act. Accordingly, we will address the secretary's office's arguments against disclosure.

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 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. In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *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 supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.<sup>3</sup> *Tex. Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at \*3. Therefore, the secretary's office must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

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<sup>3</sup>Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

Section 552.1175 of the Government Code may be applicable to some of the submitted information.<sup>4</sup> Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See Gov't Code § 552.1175.* The remaining information contains addresses and telephone numbers of individuals who may be subject to section 552.1175. Thus, the secretary's office must withhold the information we have marked under section 552.1175 if it (1) consists of home addresses or telephone numbers; (2) pertains to individuals who are subject to section 552.1175(a); and (3) the individuals elect to restrict access to this information in accordance with section 552.1175(b). However, the secretary's office may not withhold this information under section 552.1175 if it does not consist of home addresses or telephone numbers, the individuals are not subject to section 552.1175(a), or they do not elect to restrict access to this information in accordance with section 552.1175(b).

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).* Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). The secretary's office does not inform us a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the secretary's office must withhold the e-mail addresses you have marked, as well as the e-mail address we have marked, under section 552.137 of the Government Code.<sup>5</sup>

To conclude, the secretary'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 secretary's office must withhold the information we have marked under section 552.1175 of the Government Code if it (1) consists of home addresses or telephone numbers; (2) pertains to individuals who are subject to section 552.1175(a) of the Government Code; and (3) the

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<sup>4</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).*

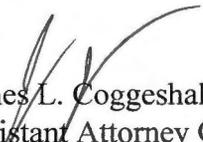
<sup>5</sup>We note section 172.028(a) of the Election Code, which was amended in the eighty-fourth Regular Legislative Session, requires the secretary to post on its website certain information that pertains to certified candidates in general primary elections, including an e-mail address at which a candidate receives correspondence relating to the candidate's campaign. *See Elec. Code § 172.208(a)(2).* However, the secretary informs us it has not yet posted any of the requested e-mail addresses on its website. *See Act of June 1, 2015, 84th Leg., R.S., ch. 1179, § 16, 2015 Tex. Gen. Laws 3963, 3966* ("As soon as practicable, but not later than December 31, 2016, the secretary of state shall complete the modifications to the secretary of state's website as necessary to enable compliance with the changes in law made by [section 172.028]."). Therefore, we do not address the applicability of section 172.028 to any of the submitted information.

individuals elect to restrict access to this information in accordance with section 552.1175(b) of the Government Code. The secretary's office must also withhold the information marked under section 552.137 of the Government Code. The secretary'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 [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/bhf

Ref: ID# 602418

Enc. Submitted documents

c: Requestor  
(w/o enclosures)