



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 19, 2016

Mr. Pink Dickens
Assistant Criminal District Attorney
Victoria County
205 North Bridge Street, Suite 301
Victoria, Texas 77901

OR2016-18792

Dear Mr. Dickens:

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# 623264.

The Victoria County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

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."² Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Upon review, the sheriff's office must withhold the insurance policy number we marked under section 552.136 of the Government Code.³

¹Although you do not explicitly raise section 552.147 of the Government Code, we understand you to raise this exception based on the substance of your argument.

²The 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).

³As our ruling is dispositive, we need not address your argument against disclosure of this information.

Section 552.101 of the Government Code exempts 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, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has concluded some kinds of personal financial information not relating to the financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992) (personal financial information includes choice of a particular insurance carrier), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). 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. *Indus. Found.*, 540 S.W.2d 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.⁴ *Texas 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.

Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff’s office must generally withhold the information we marked, along with all public citizens’ dates of birth, under section 552.101 of the Government Code in conjunction with common-law privacy. We note the information at issue includes the dates of birth of the requestor and his spouse. Section 552.023(a) of the Government Code states that a person or a person’s authorized representative has a special right of access to information that is excepted from public disclosure under laws intended to protect that person’s privacy interest. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, the requestor has a right of access to his date of birth as well as his spouse’s date of birth if he is acting as his

⁴Section 552.102(a) exempts 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).

spouse's authorized representative. *See* Gov't Code § 552.023(a); ORD 481 at 4. Therefore, the sheriff's office may not withhold the requestor's own date of birth from him under common-law privacy. Furthermore, if the requestor is acting as his spouse's authorized representative, then the sheriff's office may not withhold his spouse's date of birth under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as his spouse's authorized representative, then the sheriff's office must withhold her date of birth under section 552.101 in conjunction with common-law privacy. In any event, the department must withhold the information we have marked, along with the remaining public citizen's date 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 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. We note section 552.130 protects privacy interests. Thus, the requestor has a right of access to his own motor vehicle record information. In addition, as noted above, the requestor may be his spouse's authorized representative, and may have a right of access to information pertaining solely to her that would otherwise be confidential. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, the sheriff's office may not withhold motor vehicle record information relating to the requestor under section 552.130. Furthermore, if the requestor is acting as his spouse's authorized representative, then the sheriff's office may not withhold any motor vehicle record information pertaining solely to the requestor's spouse from this requestor under section 552.130. If the requestor is not acting as his spouse's authorized representative, then the sheriff's office must withhold any motor vehicle record pertaining solely to the requestor's spouse, which we have marked, under section 552.130. In any event, the sheriff's office must withhold the motor vehicle record information pertaining to any other individual, which we have marked, under section 552.130 of the Government Code.

Section 552.147 of the Government Code provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147(a). We note section 552.147 protects privacy interests. Thus, the requestor has a right of access to his social security number. In addition, as noted above, the requestor may be his spouse's authorized representative, and may have a right of access to information pertaining solely to her that would otherwise be private. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, the sheriff's office may not withhold the requestor's social security number from him under section 552.147. Furthermore, if the requestor is acting as his spouse's authorized representative, then the sheriff's office may not withhold her social security number from this requestor under section 552.147. If the requestor is not acting as his spouse's authorized representative, then the sheriff's office may withhold her social security number under section 552.147.

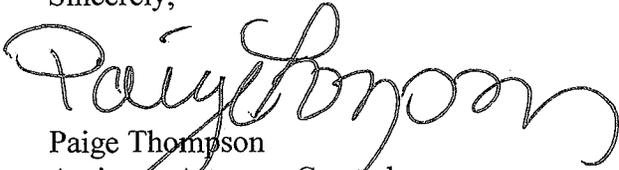
In summary, the sheriff's office must withhold the insurance policy number we marked under section 552.136 of the Government Code. If the requestor is acting as his spouse's

authorized representative, then the sheriff's office may not withhold her date of birth under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as his spouse's authorized representative, then the sheriff's office must withhold her date of birth under section 552.101 in conjunction with common-law privacy. In any event, the sheriff's office must withhold the information we marked, along with the remaining public citizen's date of birth, under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is acting as his spouse's authorized representative, then the sheriff's office may not withhold any motor vehicle record information pertaining solely to the requestor's spouse from this requestor under section 552.130. If the requestor is not acting as his spouse's authorized representative, then the sheriff's office must withhold any motor vehicle record pertaining solely to the requestor's spouse, which we have marked, under section 552.130. In any event, the sheriff's office must withhold the motor vehicle record information we marked that does not pertain to the requestor or his spouse under section 552.130 of the Government Code. If the requestor is acting as his spouse's authorized representative, then the sheriff's office may not withhold her social security number from this requestor under section 552.147 of the Government Code. If the requestor is not acting as his spouse's authorized representative, then the sheriff's office may withhold her social security number under section 552.147 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 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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

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Ref: ID# 623264

Enc. Submitted documents

c: Requestor
(w/o enclosures)