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ATTORNEY GENERAL OF TEXAS

October 21, 2016

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

OR2016-23745

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# 632709.

The Office of the Secretary of State (the "secretary's office") received a request for information pertaining to a named individual. The secretary's office states it will withhold information pursuant to sections 552.130(c) and 552.147(b) of the Government Code.¹ The secretary's office claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.²

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). 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. *See id.* § 552.147(b).

²The secretary's office explains the submitted information is contained in its statewide computerized voter registration database, which it maintains pursuant to chapter 18 of the Election Code. We note the secretary's office informs us the requestor did not make his request to the secretary's office pursuant to chapter 18 of the Election Code. *See, e.g.*, Elect. Code § 18.066 (addressing availability of secretary's office's statewide computerized voter registration list information; providing to receive information, person must submit affidavit to secretary's office stating the person will not use information obtained in connection with advertising or promoting commercial products or services). Therefore, we do not address the requestor's access to the submitted information under that chapter.

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. The secretary’s office raises the National Voter Registration Act (the “NVRA”), 52 U.S.C. §§ 20501-20511. Section 20507 of title 52 of the United States Code identifies requirements with respect to the administration of voter registration. *See* 52 U.S.C. § 20507. This section provides each state, in the administration of voter registration for elections for federal office, shall “ensure that the identity of the voter registration agency through which any particular voter is registered is not disclosed to the public.” *Id.* § 20507(a)(6); *see also id.* § 20506 (discussing designation of voter registration agencies under the NVRA). The secretary’s office informs us the “source code” within the submitted document contains information pertaining to the voter registration agency in which the named individual registered to vote. However, the secretary’s office also notes “[h]ere, the information is general – it only provides that the voter registered at [the specified agency], it does not identify the specific . . . office at which the voter registered.”

We note the term “identity” for purposes of section 20507(a)(6) is not defined in the NVRA. Therefore, the Code Construction Act requires us to construe this term “according to the rules of grammar and common usage.” Gov’t Code § 311.011(a); *see* Attorney General Opinion JC-0419 at 3 (2001). Statutory construction should focus initially “‘on the literal text of the statute in question’ because ‘the text of the statute is the law.’” *Getts v. State*, 155 S.W.3d 153, 155 (Tex. Crim. App. 2005); *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991); Attorney General Opinion GA-0354 at 2 (2005). The Merriam-Webster Dictionary includes a definition of “identity” as “who someone is: the name of a person.” Merriam-Webster Dictionary Online, www.merriam-webster.com/dictionary/identity (last visited September 23, 2016) (providing “simple definition” of “identity”). *See also* 26 U.S.C. § 6103(b)(6) (providing the term “taxpayer identity” means the name of a person with respect to whom a tax return is filed, his mailing address, his taxpayer identifying number, or a combination thereof); Open Records Decision No. 540 at 4 (1990) (finding “[a] name is by common usage often commonly considered the substantial equivalent of identity”). Accordingly, upon review of the submitted information and your representations, because the “source code” information marked by the secretary’s office contains the name of the agency in which the named individual registered to vote, we find this information contains the identity of the voter registration agency at issue for purposes of section 20507(a)(6). Thus, the secretary’s office must withhold this information under section 552.101 of the Government Code in conjunction with section 20507(a)(6) of title 52 of the United States Code.

Section 552.101 of the Government Code also encompasses section 13.004(c) of the Government Code, which reads, in part, as follows:

The following information furnished on a registration application is confidential and does not constitute public information for purposes of [the Act]:

...

(4) an indication that an applicant is interested in working as an election judge[.]

Elec. Code § 13.004(c)(4). The secretary's office represents it obtained some of the submitted information from a voter registration application. *See id.* § 18.061(a) (secretary's office must implement and maintain statewide computerized voter registration list), (c) (each voter registrar must provide to secretary's office information necessary to maintain registration list established under subsection (a)). The secretary's office must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 13.004(c)(4) of the Election Code. However, the remaining information at issue is not confidential under section 13.004(c)(4), and the secretary's office may not withhold it under section 552.101 on that ground.

Section 552.101 of the Government Code also 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). 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.³ *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. The secretary's office must withhold the date of birth it has marked in the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

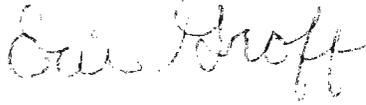
In summary, the secretary's office must withhold the following: (1) the information it has marked under section 552.101 of the Government Code in conjunction with section 20507(a)(6) of title 52 of the United States Code; (2) the information it has marked under section 552.101 of the Government Code in conjunction with section 13.004(c)(4) of the Election Code; and (3) the date of birth it has marked in the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. The secretary's office must release the remaining information.

³Section 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).

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,



Erin Groff
Assistant Attorney General
Open Records Division

EMG/som

Ref: ID# 632709

Enc. Submitted documents

c: Requestor
(w/o enclosures)