



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 4, 2016

Ms. Ann York
Records Coordinator
Cherokee County
272 Underwood Street
Rusk, Texas 75785

OR2016-24646

Dear Ms. York:

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# 633603.

The Cherokee County Sheriff's Office (the "sheriff's office") received a request for booking reports and mugshots pertaining to the specified arrests of named individuals.¹ The sheriff's office represents it is withholding some of the submitted information under sections 552.130 and 552.147 of the Government Code.² The sheriff's office states it has released some of the requested information, but 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.

Initially, we note the sheriff's office only submitted information pertaining to three of the named individuals. We assume, to the extent any additional responsive information existed

¹The sheriff'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).

²Section 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. *See* 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).

when the sheriff's office received the request for information, the sheriff's office has released it to the requestor. If not, then the sheriff's office must do so immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

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. This section encompasses chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code makes CHRI the Texas Department of Public Safety ("DPS") maintains confidential, except DPS may disseminate this information as provided in subchapters E-1 and F of chapter 411 of the Government Code. *See* Gov't Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.083(b)(1), .089. The submitted information contains Federal Bureau of Investigation ("FBI") numbers that constitute CHRI generated by the FBI. Therefore, the sheriff's office must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

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. Thus, the sheriff's office must withhold the dates of birth of public citizens in the submitted information, which

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).

we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

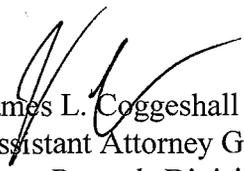
The sheriff's office asserts some of the remaining information is excepted from under section 552.101 of the Government Code because it consists of "personal identifiers." However, the sheriff's office does not cite to any specific law, and we are not aware of any, that makes this information confidential under section 552.101. *See* Open Records Decision No. 478 at 2 (1987) (statutory confidentiality requires express language making information confidential or stating information shall not be released to public). Therefore, we conclude the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code on that ground.

To conclude, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The sheriff's office must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 633603

Enc. Submitted documents

c: Requestor
(w/o enclosures)