



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 8, 2016

Ms. Ann-Marie Sheely
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2016-07925

Dear Ms. Sheely:

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# 604933.

The Travis County District Attorney's Office (the "district attorney's office") received a request for the personnel file for a named individual. You state you have released some information to the requestor. You state you will withhold certain information pursuant to section 552.147(b) of the Government Code and Open Records Decision No. 684 (2009).¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.115, 552.117, 552.130, and 552.147 of the Government

¹Section 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 an attorney general decision under the Act. Gov't Code § 552.147(b). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision, including W-4 forms, under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Section 552.102(a) of the Government Code 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). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find the district attorney’s office must withhold the date of birth you have marked, and the additional date of birth we have marked, under section 552.102(a) of the Government Code.⁴

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 chapter 411 of the Government Code, which makes confidential 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 states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F or subchapter E-1 of the Government Code. *See Gov’t Code § 411.083.* 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 a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F or subchapter E-1 of the Government Code. Upon review, we find the information we marked consists of CHRI and

²Although your brief does not raise section 552.147, we understand you to raise this exception based on your markings in the submitted information.

³We 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.

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

the district attorney's office must withhold the marked information under section 552.101 in conjunction with section 411.083 of the Government Code.⁵

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). 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 found a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, this office has noted the public has a legitimate interest in information relating to those who are involved in law enforcement. *See, e.g.*, Open Records Decision Nos. 562 at 10 (1990), (personnel file information does not involve most intimate aspects of human affairs but in fact touches on matters of legitimate public concern), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of law enforcement employees), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest), 329 (1982) (reasons for employee's resignation ordinarily not private). Upon review, we find none of the remaining information at issue is highly intimate or embarrassing information of no legitimate public interest, and none of it may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.115 excepts from disclosure "[a] birth or death record maintained by the vital statistics unit of the Department of State Health Services or a local registration official [.]" Gov't Code § 552.115. Section 552.115 is applicable only to information maintained by the vital statistics unit or local registration official. *See* Open Records Decision No. 338 (1982). The submitted birth certificate is maintained by the district attorney's office, and not by a vital statistics unit or local registration official. Therefore, the district attorney's office may not withhold it under section 552.115 of the Government Code.

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

⁵As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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. *See* Gov't Code § 552.117(a)(1). 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 the 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 the 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. You state the individual to whom the information at issue pertains elected to withhold his personal information prior to the district attorney's office's receipt of the present request. Therefore, the district attorney's office must withhold the information you have marked, and the additional information we have marked, under section 552.117(a)(1) of the Government Code.⁶

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or 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. Gov't Code § 552.130(a). Upon review, we find the district attorney's office must withhold the motor vehicle record information you have marked, and the additional information we have marked, under section 552.130 of the Government Code.

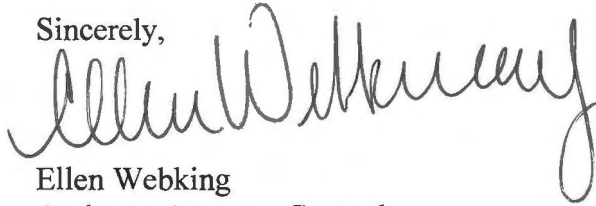
In summary, the district attorney's office must withhold the date of birth you have marked, and the additional date of birth we have marked, under section 552.102(a) of the Government Code. The district attorney's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The district attorney's office must withhold the information you have marked, and the additional information we have marked, under section 552.117(a)(1) of the Government Code. The district attorney's office must withhold the motor vehicle record information you have marked, and the additional information we have marked, under section 552.130 of the Government Code. The district attorney'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.

⁶As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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,

A handwritten signature in black ink, appearing to read "Ellen Webking". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 604933

Enc. Submitted documents

c: Requestor
(w/o enclosures)